



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3329]

FRIDAY, THE NINETEENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

WRIT PETITION NO: 31651/2017

Between:

1. KONA VENKATA BALA SIMHACHALAM @ SRINU, S/O. SATYANARAYANA, AGED 38 YEARS R/O. D NO. 5-33, KOTHAKOVVADA VILLAGE PADMANABHAM MANDAL, VISAKHAPATNAM DISTRICT
2. DWARAPUDI SWAMY NAIDU @ BUJJI, S/O. SURI BABU, AGED 38 YEARS, R/O. RAJAPATRUNIPALEM VILLAGE KOTHAVALASA MANDAL, VIZIANAGARAM DISTRICT
3. PENTAKOTA SIVA PRASAD,, S/O. SRINIVASA AGED 21 YEARS, R/O. MEDICHARLA AL9M1KONDA VILLAGE DEVARAPALLI MANDAL, VISAKHAPATNAM DISTRICT
4. LAGUDU SATYANARAYANA,, S/O. SURYA RAO AGED 27 YEARS, R/O. KOTHAKOVVADA VILLAGE PADMANABHAM MANDAL, VISAKHAPATNAM DISTRICT

...PETITIONER(S)

AND

1. STATE OF ANDHRA PRADESH REP BY ITS PRINCIPAL SECRETARY, HEALTH, MEDICAL & FAMILY WELFARE (L) DEPARTMENT SECRETARIAT, VELAGAPUDI, AMARAVATHI, GUNTUR DISTRICT
2. THE JOINT COLLECTOR ADJUDICATING OFFICER, IN CONNECTION WITH FOOD SAFETY & STANDARDS SRIKAKULAM DISTRICT

3.THE COMMISSIONER OF FOOD SAFETY STANDARDS, ANDHRA PRADESH, VELAGAPUDI, AMARAVATHI GUNTUR DISTRICT

4.FOOD SAFETY OFFICER, OFFICE OF DISTRICT FOOD INSPECTOR OFFICER, SRIKAKULAM, SRIKALLAM DISTRICT

5.MR K KUMANAYAKULA FSO, SON OF NOT KNOWN TO THE PETITIONER, AGE MAJOR WORKING AS FOOD SAFETY OFFICER SRIKAKULAM, SRIKAKULAM DISTRICT

6.THE STATION HOUSE OFFICER ICHAPURAM POLICE STATION, ICHAPURAM SRIKAKULAM DISTRICT

...RESPONDENT(S):

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ, order or Direction more particularly one in the nature of Writ of Certiorari, calling for the records relating to the issuance of the Order dated 05.08.2017 in RC No. 1316/2017/D5 passed by the 2nd respondent on complaint of 4th respondent dated 02.03.2017, even though violation of law and on elapsed GO Ms No. 6 dt. 09.01.2013 and Gazette Notification No. 9 dt. 30.01.2016 valid up to 10.01.2017, even without following the due procedure as contemplated under the law and even without giving any opportunity to the petitioners including filing of explanation or written submissions curtailing the rights of the petitioners as guaranteed by the Constitution of India under Art. 311 (2) is illegal, arbitrary and against the principles of natural justice and also violation of Articles 14, 19 and 21 of the Constitution of India and consequently Quash the Order of the 2nd respondent dated 5.08.2017 in the interest of justice

IA NO: 1 OF 2017(WVMP 4483 OF 2017)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased

IA NO: 2 OF 2017(WPMP 39406 OF 2017)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to SUSPEND the Impugned Order dated 05.08.2017 passed by the 2nd respondent in RC No. 1316/2017/D5, pending disposal of the main writ petition

IA NO: 3 OF 2017(WPMP 49742 OF 2017

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to extend the interim order dated 18-9-2017 passed by this Hon'ble Court in WP MP NO. 39406/2017 in WP No. 31651/2017 for further period of eight weeks and to pass

Counsel for the Petitioner(S):

- 1.R SIVA SAI SWARUP

Counsel for the Respondent(S):

- 1.GP FOR MEDICAL HEALTH & FW(AP)
- 2.GP FOR HOME (AP)
- 3.GP FOR MEDICAL HEALTH FW(AP)

The Court made the following:

THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

WRIT PETITION NO: 31651/2017

ORDER:

This writ petition is filed under Article 226 of the Constitution of the India seeking the following reliefs:-

“ to issue a Writ, order or Direction more particularly one in the nature of Writ of Writ of Certiorari, calling for the records relating to the issuance of the Order dated 05.08.2017 in RC No.1316/2017/D5 passed by the 2nd respondent on complaint of 4th respondent dated 02.03.2017 even though violation of law and on elapsed G.O.Ms.No.6, dt.09.01.2013 and Gazette Notification No.9, dt.30.01.2016 valid up to 10.01.2017 even without following the due procedure as contemplated under the law and even without giving any opportunity to the petitioners including filing of explanation or written submissions curtailing the rights of the petitioners as guaranteed by the Constitution of India under Art.311(2) is illegal, arbitrary and against the principles of natural justice and also violation of Articles 14, 19 and 21 of the Constitution of India and consequently Quash the Order of the 2nd respondent dated 5.08.2017 in the interest of justice and pass such other order.”

2. Heard the learned counsel for the petitioners and learned Government Pleader for the respondents.

3. Learned counsel for the petitioners submits that the petitioners herein are engaged in business of sub products of tobacco i.e., Gutka, pan masala and other related products. While so, on 05.08.2017, pursuant to the complaint lodged by the respondent No.4, respondent No.2 issued a notice/ order on the ground that the petitioners are dealing with the business of tobacco products which were prohibited and banned by virtue of G.O.Ms.No.6, dated 09.01.2013. As per the said GO., the power of

enforcing the ban/ prohibition was entrusted to the Commissioner of Food Safety & Standards/ respondent No.3 but not with the respondent No.2. He further submits that the said issue fell for consideration before the Hon'ble Division Bench of this Court in batch of writ petitions i.e., W.P.No.30185 of 2021 and batch, wherein, the Hon'ble Division Bench of this Court had set aside the action initiated by the respondent authorities. He further submits that in view of the ratio laid down by the Hon'ble Division Bench of this Court, notice issued by respondent No.2 dated 05.08.2017 pursuant to the complaint dated 02.03.2017 is liable to be set aside.

4. On the other hand, learned Government Pleader for the respondents submits that in similar batch of writ petitions, the Hon'ble Division Bench of this Court observed that as per the provisions of Food Safety and Standards Act, 2006 the respondent authorities are not empowered to take action pursuant to the ban imposed under G.O.Ms.No.6, dt.09.01.2013.

4. Heard the learned counsel for the petitioners and learned Government Pleader for the respondents and on perusal of the material placed on record, more particularly the order dated 24.03.2023 passed by this Court in W.P.No.30185 of 2021 and batch, the issue involved in this Writ Petition is squarely covered by the order dated 24.03.2023 passed by the Division Bench of this Court in W.P.Nos. 30185 of 2021 and batch. For

more understanding the operative portion of the order is extracted hereunder:

“Ex Consequenti, it is declared that the Commissioner of Food Safety, Andhra Pradesh is neither authorized nor having any jurisdiction to issue the impugned notification, prohibiting the manufacture, storage, distribution, transportation and sale of Gutka/ Pan Masala which contains Tobacco and Nicotine as ingredients and Chewing Tobacco products, within the meaning of Sections 3(m) and 3(p) of the COTPA, 2003, in exercise of powers under Section 30(2)(a) of the FSSA, 2006.

As a further consequence, the respondents are directed not to interfere with the lawful day-to-day business activities of the writ petitioners with regard to Tobacco products.

The seizure of Tobacco products by the respondents under the impugned notification or under the FSSA, 2006/ the FSSA Regulations, 2011, is also held to be bad in law. All the seized products are directed to be released forthwith. No further coercive action can also be taken under the provisions of the FSSA, 2006/ the FSSA Regulations, 2011 against the licensed business.”

5. In view of the foregoing discussion, the present writ petition is allowed with the following directions:

i) The impugned order dated 05.08.2017 issued by respondent No.2 is hereby set aside;

ii) However, the respondents are directed not to interfere with the lawful day-to-day business activities of the petitioners with regard to the tobacco products.

iii) The seizure of Tobacco products by the respondents under the impugned order or under the FSSA, 2006/ the FSSA Regulations, 2011, is also held to be bad in law. All the seized products are directed to be released forthwith. No further coercive action can also be taken under the provisions of the FSSA, 2006/ the FSSA Regulations, 2011 against the licensed business.

There shall be no order as to costs.

As a sequel miscellaneous application, pending, if any, shall also stand closed.

19.02.2026
BSP/TPS

VENKATESWARLU NIMMAGADDA, J

59

HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

WRIT PETITION NO: 31651/2017

19.02.2026
BSP/ TPS