

D. Nitesh Kumar vs The State Of Telangana on 21 September, 2022

Author: Lalitha Kanneganti

Bench: Lalitha Kanneganti

HIGH COURT FOR THE STATE OF TELANGANA

WRIT PETITION Nos.34806, 34816, 34895, 34959 and 35096 of 2022

W.P.No.34806 of 2022

D. Nitesh Kumar, s/o.D.Anand Kumar, Aged:about 30 years,
occ:Business, R/o.5-45, Tara Nagar, Serilingampally, Ranga Reddy
District, Telangana.

..Petitioner.

and

1. The State of Telangana, represented by its Principal Secretary,
Home Department, Secretariat Buildings, Hyderabad.
2. The Director General of Police, Telangana State Police
Headquarters, Lakdikapul, Hyderabad.
3. The Commissioner of Police, Hyderabad City, Hyderabad.
4. The Station House Officer, Golconda Police Station, Hyderabad.

... Respondents

W.P.No.34816 of 2022

Subba Rao Kiranam & General Stores, 7/227, Huzur Nagar Road,
Nereducherla Town, Suryapet District-508 218, Telangana represented
by its Proprietor Subba Rao Athukuri.

..Petitioner.

and

1. The State of Telangana, represented by its Principal Secretary,
Home Department, Secretariat Buildings, Hyderabad.
2. The Director General of Police, Telangana State Police
Headquarters, Lakdikapul, Hyderabad.
3. The Commissioner of Police, Nalgonda, Nalgonda District.
4. The Superintendent of Police, Suryapet, Suryapet District,
5. The Station House Officer, Nereducherla Police Station,
Suryapet District.

... Respondents

W.P.No.34895 of 2022

Dannarapu Vasudeva Rao, s/o. Late Harinadhababu, Aged:about 52
years, occ:Business, R/o.B.K.Bazar, Khammam, Telangana State.

..Petitioner.

LK, J

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2. The Director General of Police, Telangana State Police Headquarters, Lakdikapul, Hyderabad.
3. The Commissioner of Police, Khammam, Khammam District.
4. The Station House Officer, Khammam I Town Police Station, Khammam, Khammam District.

... Respondents

W.P.No.34959 of 2022

Dannarapu Indu, w/o. Madhava Rao, Aged:about 35 years
occ:Business, R/o.H.No.8-1-851/3, B.K. Bazar, Khammam, Khammam
Urban, Khammam District.

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W.P.No.35096 of 2022

Akuthota Narsimha, s/o. Akuththa Laxmaiah, Aged:about 45 years,
occ:Business R/O.H.No.10-87, Seetharampuram, Miryalguda,
Nalgonda-509 207, Telangana State.

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LK, J

THE HONOURABLE SMT. JUSTICE LALITHA KANNEGANTI

1. Yes/No
Whether Reporters of Local newspapers
may be allowed to see the Judgments?
2. Yes/No
Whether the copies of judgment may be
marked to Law Reporters/Journals?
3. Yes/No
Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment?

LALITHA KANNEGANTI, J

LK, J

4

W.P.No.34806 of 2021 & batch

THE HONOURABLE SMT. JUSTICE LALITHA KANNEGANTI
+ WRIT PETITION Nos.34806, 34816, 34895, 34959 and 35096 of
2022

% Dated 21.09.2022

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5

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LK, J

6

W.P.No.34806 of 2021 & batch

! Counsel for Petitioners : Mr.Y. Bala Murali.

^ Counsel for Respondents :Assistant Government Pleader for Home.

Mr.

< GIST:

> HEAD NOTE:

? CITATIONS:

- NIL -

7

W.P.No.34806 of 2021 & b

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION Nos.34806, 34816, 34895, 34959 and 35096 of 2022

COMMON ORDER:

Since the common issue is involved in all these writ petitions, they are being disposed of by this common order.

2. W.P.No.34806 of 2022 is filed with the following prayer;

"to issue a Writ, Order, direction especially one in the nature of Writ of Mandamus declaring the action of respondent Nos.2 to 4 in frequently interfering with the smooth running of the business of the petitioner especially the 4th respondent coming to the house of the petitioner harassing and threatening the family members of the petitioner without any right and authority and seizing the tobacco products purchased with valid bills and registering the cases against the petitioner as illegal arbitrary and unjust and against the principles of natural justice and one without jurisdiction and further declare the action of the respondents in not by complying the orders of the Honble Supreme Court vide its orders dt.31-03-2022 passed in Special

Leave Appeal C Nos.20441/2021 in respect of the Notification No 501/FSS-1/2022 dt 07-01-2022 in the case of Sri Venkateshwara Traders Vs The State of Telangana and others and consequently direct the respondents to release the stock of the petitioner seized in connection with Crime No 214 of 2022 on the file of the Golconda Police Station Hyderabad by complying the orders of the Honble Supreme Court vide its orders dt 31-03-2022 passed in Special Leave Appeal C Nos 20441/2021 against the Notification No.501/FSS-1/2022 dt 07-01-2022 as the respondents are violating the stay orders which is in order for which suo-moto contempt proceedings to be on respondents authorities as per Contempt of Court Act".

LK, J

3. W.P.No.34816 of 2022 is filed with the following prayer;

"to issue writ, order or direction especially one in the Nature of Writ of Mandamus declaring the action of respondent Nos.2 to 5 especially the 5th respondent on the instructions of respondent No. 4 in interfering with the day to day business activities of petitioner and calling him to the police station and forcing him to sit in the police station till late hours is illegal, arbitrary and violative of Article 21 of the Constitution of India and further declare the action of the respondents in not complying the stay granted vide its orders dt 31-03-2022 by the Honble Supreme Court in respect of Notification 501/FSS-112022 dt 07-01-2022 in the case of Sri Venkateshwara Traders Vs The State of Telangana and others in Special Leave Appeal © Nos 20441 of 2021 and consequently direct respondent Nos.2 to 5 not to interfere with personal liberty of the petitioners day to day business and not to harass the petitioner by calling him to the police station".

4. W.P.No.34895 of 2022 is filed with the following prayer;

"to issue writ, order or direction especially one in the Nature of Writ of Mandamus declaring the action of respondent Nos.2 to 4 especially the 4th respondent on the instructions of respondent No 3 in interfering with the day to day business activities of petitioner and calling him to the police station and forcing him to sit in the police station till late hours is illegal arbitrary and violative of Article 21 of the Constitution of India and further declare the action of the respondents in not complying the stay granted vide its orders dt 31-03-2022 by the Honble Supreme Court in respect of Notification 501/FSS-1/2022 dt 07-01-2022 in the case of Sri Venkateshwara Traders Vs The State of Telangana and others in Special Leave Appeal (C) Nos 20441 of 2021 consequently direct respondent Nos. 2 to 4 not to interfere with personal liberty of the petitioners day to day business and not to harass the petitioner by calling him to the police station"

LK, J

5. W.P.No.34959 of 2022 is filed with the following prayer;

"to issue a Writ, Order direction especially one in the nature of Writ of Mandamus declaring the action of respondent Nos.2 to 4 in frequently interfering with the smooth running of the business of the petitioner especially the 4th respondent coming to the shop and house of the petitioner harassing and threatening the family members of the petitioner without any right and authority and seizing the tobacco products purchased with valid bills and registering the cases against the petitioner as illegal arbitrary and unjust and against the principles of natural justice and one without jurisdiction and further declare the action of the respondents in not by complying the orders of the Honble Supreme Court vide its orders dt 31-03-2022 passed in Special Leave Appeal © Nos 20441/2021 in respect of the Notification No 501/FSS-1/2022 dt 07-01-2022 in the case of Sri Venkateshwara Traders Vs The State of Telangana and others and consequently direct the respondents to release the stock of the petitioner seized in connection with Crime No 214 of 2022 on the file of the Golconda Police Station Hyderabad by complying the orders of the Honble Supreme Court vide its orders dt 31-03-2022 passed in Special Leave Appeal © Nos 20441/2021 against the Notification No 501/FSS-1/2022 dt 07-01-2022 as the respondents are violating the stay orders which is in order for which suo-moto contempt proceedings to be on respondents authorities as per Contempt of Court Act".

6. W.P.No.35096 of 2022 is filed with the following prayer;

"to issue writ, order or direction especially one in the Nature of Writ of Mandamus declaring the action of respondent Nos.2 to 4 especially the 4th respondent on the instructions of the respondent No. 3 in interfering with the day to day business activities of petitioner and calling him to the police station and forcing him to sit in the police station till late hours is illegal arbitrary and violative of Article 21 of the Constitution of India and further declare the action of the respondents in not complying the stay granted vide its orders dt 31-03-2022 by the Honble Supreme Court in respect of Notification 501/FSS-1/2022 dt 07-01-2022 in the case of Sri Venkateshwara LK, J Traders Vs The State of Telangana and others in Special Leave Appeal (C) Nos.20441 of 2021 consequently direct respondent Nos. 2 to 4 not to interfere with personal liberty of the petitioners day to day business and not to harass the petitioner by calling him to the police station".

7. When these matters came up on 19-09-2022, this Court has passed the following order;

"Learned counsel for the petitioner submits that the Government of Telangana has issued a notification No.501/FSS-1/2022 dated 07.01.2022 in exercise of the powers conferred under Section 30 of the Food Safety and Standards Act, 2006 prohibiting the manufacture, storage, distribution, transportation and sale of Gutka/Panmasala which contains tobacco and nicotine as ingredients and chewing Tobacco products

like chap tobacco, pure tobacco, Khaini, Kharra, Scented tobacco/flavoured tobacco packed in pouches/sachets/containers in the entire State of Telangana for one (1) year with effect from 10.01.2022.

Learned counsel for the petitioner submits that one Sri Venkateshwara Traders has carried this matter to the Hon'ble Apex Court by filing SLP (C) No.20441 of 2021 and the Hon'ble Apex Court by order dated 31.03.2022 has stayed the notification dated 07.01.2022.

He submits that in spite of the said orders granted by the Hon'ble Apex Court staying the notification, the respondents still in a highhanded manner without any authority of law are seizing the stocks and registering the cases against the petitioners. He submits that the information regarding the stocks that are seized as contemplated under the provisions of criminal procedure are not intimated to the concerned court and they are not taking any steps and for no fault of the petitioners they have been put to great hardship. It is submitted that if the seized stock is surrendered before the court, the petitioners would get an opportunity to file an application before the court below under Section 451 Cr.P.C. The procedure that is adopted by the respondents is unknown to law and basing on their whims and fancies, they are registering the cases.

He submits that there are about five to six matters before this court and the first matter has come up on 07.09.2022 and thereafter also, when it is represented before this court by the learned Assistant Government Pleader for Home that the order of Hon'ble Apex Court will be communicated to all the officers in the State, still they are continuing to register the cases/seize the stocks. It is stated that on LK, J 17.09.2022, in Hanmakonda, they apprehended three persons along with an auto and seized Rs.2,75,000/- worth of Gutka and the auto from their possession.

Learned counsel for the petitioners further submits that with regard to the very same circular, when the matters were listed before the 1st Court, the Division Bench has categorically observed at "Para No.6 of the order that:

"6. We make it clear that since the entire matter is before the Supreme Court, it would not be proper on our part to have a parallel adjudication as the order of the Supreme Court would be binding on all courts and authorities. Since the Supreme Court has stayed the impugned notification vide the order dated 31.03.2022, respondents shall comply with the said order of the Supreme Court in letter and spirit".

He submits that in spite of the orders passed by the Division Bench, clarifying the situation, the respondents have no respect to the courts and to the orders passed by it and blatantly, they are violating the orders passed by the court.

Learned Assistant Government Pleader for Home submits that they have been advising the officials with regard to these cases. He seeks some more time so that they can sensitize the officers.

This court is not able to appreciate the said contention as these matters have initially come up on 07.09.2022 and on that day also, very same submission is made by the learned Assistant Government Pleader for Home.

When a circular issued by the Government is suspended by the Hon'ble Apex Court and when the Government is a party to the said litigation, it is the duty of the Principal Secretary (Home) and Director General of Police to sensitize the concerned officers about the said orders passed by the court.

This court is not able to appreciate the contention of the learned Assistant Government Pleader for Home that each and every officer has to be sensitized about this and till such time, they keep on registering the cases without any authority and the persons who are doing the business have to rush to this court.

In fact, it is also represented before this court that on behalf of the Hyderabad Zarda - Panmasala Manufactures & Merchants Welfare Association a representation was given on 25.04.2022 stating that in spite of the orders passed by the Hon'ble Apex Court, police are continuously interfering with the business and registering the cases and hence, requested the Director General of Police to instruct the concerned to follow the orders of the Hon'ble Apex Court.

He submits that so far, no action has been taken by the Director General of Police.

LK, J Learned Assistant Government Pleader for Home submits that the said representation was not filed along with the writ petition and the same has been passed on to the Bench. He submits that he needs to get instructions in this regard.

There is a clear inaction and laches on the part of the respondents in giving effect to the orders passed by the Hon'ble Apex Court as well as this court. When a notification dated 07.01.2022 issued by them was stayed by the Hon'ble Apex Court where the Government of Telangana is a party, conveniently, they have not taken any steps in implementing the said order and in a way, they kept quiet and keep on registering the cases and interfering with the business contrary to the orders passed by the Hon'ble Apex Court.

When a Division Bench of this court has further clarified that even after that also, the cases are registered at Warangal. This conduct on behalf of the respondents shows that they have no respect to the orders passed by the Hon'ble Apex Court as well as to this Court.

In this regard, a circular shall be issued by the Director General of Police to all the concerned officers about the orders of the Hon'ble Apex Court staying the notification dated 07.01.2022 issued by the State Government and also the orders passed by the Division Bench of this Court in W.P.Nos.20212 of 2022 and Batch on 08.09.2022. The said circular shall be placed before this court

by 21.09.2022 or else the Director General of Police shall appear before this court.

The learned Assistant Government Pleader for Home shall also get instructions whether the seized stocks are deposited before the court or not. If it is deposited, the details with regard to the same.

Registrar, Judicial shall communicate the copy of this order to the Director General of Police today itself.

Post on 21.09.2022 in the motion list.

8. When the matters came up today, learned Assistant Government Pleader for Home has placed before this Court the Circular Memorandum dated 19-9-2022 issued by the Director General of Police, Telangana State, Hyderabad, which reads thus;

" The Commissioner of Food Safety, Directorate, Institute of Preventive Medicine, Public Health Labs, Food (Health) Administration, Telangana LK, J State, Narayanaguda, Hyderabad vide notification reference cited issued imposition of Prohibition u/s.30(2)(a) of the said Act on manufacture, storage, distribution, transportation and sale of Gutka/Panmasala which contain tobacco and nicotine as ingredients and chewing tobacco products like chap tobacco, pure tobacco, Khaini Kharra, scented tobacco/flavoured tobacco or by whatever name locally it is called packed in sachets/pouches/package in the entire State of Telangana.

The Hon'ble Supreme Court of India vide its order dated 31-03-2022 in SLP(C) No.20441/2021 had granted interim stay orders (copy enclosed) on the Notification No.501/FSS-1/2022 dated 07-01-2022 issued by the Commissioner of Food Safety, Public Health Labs and Food Administration, Hyderabad. Different Writ Petitions have also been filed subsequently in the Hon'ble High Court of Telangana on this issue. The Hon'ble High Court in turn have made certain observations (copy enclosed) vide order No.dated 08-09-2022 in W.P.Nos.20212, 20241, 20263, 20308, 20582, 21154, 21225, 22538, 26535, 26555, 27381, 27611, 27673, 27960, 32684 and 32734 of 2022.

In view of the interim stay orders of the Hon'ble Supreme Court of India as stated supra, dated 31-03-2022 and the observations of the Hon'ble High Court vide its common order dated 08-09-2022, all the Commissioners of Police and Superintendents of Police in the State are hereby directed to instruct all the SHOs under their control not to LK, J interfere in the business activities as per FSSAI Notification and also not to take any coercive measures against the petitioners as long as the orders of Hon'ble Supreme Court are in force.

All SsP/CsP are instructed to ensure that the orders of Hon'ble Supreme Court and Hon'ble High Court are implemented in letter and spirit".

9. In the light of the orders passed by the Honourable Apex Court in SLP(C) Nos.1656 and 5399 of 2022, whereby the notification issued by the Government of Telangana vide Notification No.501/FSS-1/2022 dated 07-01-2022 shall remain stayed. Till the said orders are in operation, the respondents shall not interfere with the business activities of the petitioners and further, the Director General of Police has also issued the Circular to all the concerned and contrary to the same, if any action is initiated by any of the Officers, the same shall be viewed seriously.

10. Accordingly, all the Writ Petitions are disposed of. No order as to costs.

11. Miscellaneous Applications, if any pending in these writ petitions, shall stand closed.

_____ LALITHA KANNEGANTI, J 21st September, 2022 sj L.R.Copy to be marked.