

IN THE HIGH COURT OF KARNATAKA, BANGALORE

DATED THIS THE 28TH DAY OF NOVEMBER, 2014

BEFORE

THE HON'BLE MR. JUSTICE S ABDUL NAZEEER

WRIT PETITION NO.41518 OF 2014 (GM-RES)

BETWEEN:

KUNDAPUR TALUK
AGRICULTURAL PRODUCERS
CO-OPERATIVE MARKETING
SOCIETY LTD.,
UDUPI DISTRICT – 576 101.
REP. BY ITS MANAGER.

... PETITIONER

(BY SRI.S.PRAKASH SHETTY, ADV.,)

AND:

1. STATE OF KARNATAKA
DEPARTMENT OF FOOD,
CIVIL SUPPLY AND CONSUMER AFFAIRS
MULTI STORE BUILDING
VIDHANA VEEDHI
BANGALORE- 560 001
REP. BY ITS SECRETARY.
2. THE COMMISSIONER, FOOD AND
CIVIL SUPPLY & CONSUMER AFFAIRS
GOVERNMENT OF KARNATAKA
MARKETING FEDERATION BUILDING
CUNNINGHAM ROAD
BANGALORE – 560 001.
3. THE DEPUTY COMMISSIONER
UDUPI DISTRICT
UDUPI – 576 101.
4. THE DEPUTY DIRECTOR
FOOD AND CIVIL SUPPLY
UDUPI DISTRICT – 576 101.

5. SRI.M.P.GANGADHAR
FOOD, CIVIL SUPPLY AND
CONSUMER AFFAIR
OFFICE OF THE COMMISSIONER FOR
FOOD & CIVIL SUPPLY
STATE OF KARNATAKA
MARKETING FEDERATION BUILDING
CUNNINGHAM ROAD
BANGALORE – 560 001.

... RESPONDENTS

(BY SRI.H.T.NARENDRA PRASAD, AGA
FOR R1 – R4,
R5 IS STRUCK OF V/O.DTD.10-09-2014)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR THE RECORDS WHICH CULMINATELY RESULTED IN PASSING OF THE ORDER ANNX-J DT.1-3-2013 BY THE R-4 AND ORDER DT.13-05-2014 IN ANNX-L AND QUASH THE ORDER ANNX-J DT.1-3-2013 PASSED BY THE R-4 AND ANNX-L DT.13-5-2013 PASSED BY R-1 AND DIRECT THE RESPONDENTS TO REFUND THE AMOUNT WITH 18% INTEREST AND COST.

THIS PETITION IS COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

O R D E R

In this case, the petitioner has called in question the validity of the order at Annexure-L dated 13.05.2014 whereby the 1st respondent has modified the order passed by the 4th respondent at Annexure-K dated 19.08.2013 and has limited the penalty payable in a sum of Rs.6,53,240/-.

2. The petitioner is a Taluk Agricultural Produce Co-operative Marketing Society, Kundapur Taluk, Udupi District. It is a whole sale distributor for supply of essential commodities in Kundapur Taluk. The 4th respondent passed an order at Annexure-J dated 01-03-2013 imposing penalty of Rs.6,53,240/- for not lifting the food grains for the month of September, 2012. However, the penalty amount was increased by the 2nd respondent herein in a sum of Rs.20,66,00/- as per Annexure-K dated 19-08-2013. The petitioner gave a representation to the State Government for reducing the penalty. The State Government by order at Annexure-L has reduced the penalty in a sum of Rs.6,53,240/-.

3. The contention of the petitioner is that the respondents have no jurisdiction or authority to levy the penalty for not lifting the food grains. It is further submitted that the order has been passed by the 2nd and 4th respondents without notice to the petitioner.

4. On the other hand, learned Additional Government Advocate appearing for the respondents has sought to justify the impugned orders.

5. Learned Advocates have taken me through the various provisions of the Karnataka Essential Commodities (Public Distribution System) Control Order, 1992 (for short ‘Control Order’). Clause 12 of the control order provides for cancellation of authorisation in case there is any contravention of conditions of the provisions. The cancellation order has to be passed by the Deputy Commissioner, who is the authorized officer. The other provision relied on by the learned High Court Government Advocate is Clause 16, which is as under:

“16. Issue of Directions:-(1) *The Government and the Director may, in order to secure better compliance with the provisions of this order, issue directions from time to time to authorized dealers and fair price depots.*

(2) *Every authorized dealer and every fair price depot to whom any order or direction is issued by Government or the Director or an authority empowered under this order shall comply with such order or direction".*

6. This provision does not authorize the second or fourth respondents to impose penalty. This Court in the case of **H.Ramakrishna v. Deputy Commissioner, Tumkur District, Tumkur and Others - 2003(5) KAR.L.J.386** has held that under Clause 12 of the Control Order, penalty cannot be levied. Thus, levy of penalty is totally unauthorised.

7. In the result, the writ petition succeeds and it is accordingly allowed. The orders at Annexure-J dated 01-03-2013 passed by the 4th respondent, Annexure-K dated 19-08-2013 passed by the 2nd respondent and Annexure-L dated 13-05-2014 passed by the 1st respondent are hereby quashed.

8. In view of the quashing of the impugned orders, it is needless to say that the 4th respondent – Deputy Director with whom the aforesaid amount has

been deposited is directed to return the said amount to the petitioner within six weeks. No costs.

**Sd/-
JUDGE**

VMB