

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

WRIT PETITION NO: 11074 of 2023

THANDYALA PRASADA RAO, S/O BHASKARA RAO, AGED
ABOUT 50 YEARS RIO PONDURU VILLAGE AND MANDAL
SRIKAKULAM DISTRICT.

... Petitioner

Versus

STATE OF ANDHRA PRADESH, REP. BY ITS PRINCIPAL
SECRETARY TO GOVERNMENT, PANCHAYAT RAJ AND
RURAL DEVELOPMENT DEPARTMENT SECRETARIAT,
VELAGAPUDI, AMARAVATI AND OTHERS

... Respondents

DATE OF ORDER PRONOUNCED : **07.05.2026**

SUBMITTED FOR APPROVAL:

HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

1. Whether Reporters of Local Newspapers
may be allowed to see the order? : Yes/No
2. Whether the copy of order may be
marked to Law Reporters/Journals? : Yes/No
3. Whether His Lordship wish to
see the fair copy of the order? : Yes/No

SUBBA REDDY SATTI, J

*** HONOURABLE SRI JUSTICE SUBBA REDDY SATTI**

WRIT PETITION NO: 11074 OF 2023

% 07.05.2026

Writ Petition No. 11074 of 2023

THANDYALA PRASADA RAO, S/O BHASKARA RAO, AGED ABOUT 50 YEARS RIO PONDURU VILLAGE AND MANDAL SRIKAKULAM DISTRICT.

... Petitioner

Versus

STATE OF ANDHRA PRADESH, REP. BY ITS PRINCIPAL SECRETARY TO GOVERNMENT, PANCHAYAT RAJ AND RURAL DEVELOPMENT DEPARTMENT SECRETARIAT, VELAGAPUDI, AMARAVATI AND OTHERS

... Respondents

! Counsel for Petitioner : Sri P.Raj Kumar, learned counsel for the petitioner

^ Counsel for Respondents : P.Rajesh Kumar, learned Assistant Government Pleader for Panchayat Raj and Rural Development, Sri Chaitanya, learned counsel representing Sri Y.Koteswara Rao, Sri G.Ananda Rao, learned counsel

< Gist:

> Head Note:

? Cases referred:

1. (2014) 9 SCC 105
2. (1980) 3 SCC 1
3. (2021) 2 SCC 551
4. (2016) 9 SCC 426
5. AIR 1963 SC 1633
6. [(2003) 3 SCC 541
7. [(2003) 5 SCC 413]
8. [(2003) 1 SCC 123]
9. (2004) 6 SCC 588

This Court made the following:

APHC010212152023



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

[3331]

**THURSDAY, THE SEVENTH DAY OF MAY
TWO THOUSAND AND TWENTY SIX
PRESENT**

**THE HONOURABLE SRI JUSTICE SUBBA REDDY SATTI
WRIT PETITION NO: 11074/2023**

Between:

1. THANDYALA PRASADA RAO, S/O BHASKARA RAO, AGED ABOUT 50 YEARS RIO PONDURU VILLAGE AND MANDAL SRIKAKULAM DISTRICT

...PETITIONER

AND

1. STATE OF ANDHRA PRADESH, REP. BY ITS PRINCIPAL SECRETARY TO GOVERNMENT, PANCHAYAT RAJ AND RURAL DEVELOPMENT DEPARTMENT SECRETARIAT, VELAGAPUDI, AMARAVATI

2. THE DISTRICT COLLECTOR, PANCHAYAT RAJ WING SRIKAKULAM DISTRICT

3. THE DISTRICT PANCHAYAT OFFICER, SRIKAKULAM DISTRICT

4. DIVISIONAL PANCHAYAT OFFICER, PANCHAYAT RAJ DEPARTMENT SRIKAKULAM DISTRICT

5. PONDURU GRAM PANCHAYAT, REP BY ITS PANCHAYAT SECRETARY PONDURU VILLAGE AND MANDAL SRIKAKULAM DISTRICT

6. ALLAMSETTY RAVI S/O APPA RAO, AGED ABOUT 55 YEARS, OCC GOVERNMENT TEACHER, R/O H.NO. 2-895, HOSPITAL STREET, PONDURU (VILLAGE AND MANDALAM) SRIKAKULAM DISTRICT. R6 IS IMPEADED AS PER THE COURT ORDER DT.17.09.2024 VIDE ORDERS PASSED IN I.A.NO.02 OF 2023.

7. ANDHRA PRADESH POLLUTION CONTROL BOARD, REP BY THE ENVIRONMENTAL ENGINEER, SRIKAKULAM DISTRICT. R7 IS SUO-MOTO IMPEADED AS PER THE COURT'S ORDER DT.08.12.2025

...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 an appropriate writ or order or direction more particularly one in the nature of Writ of Mandamus declaring the proceedings in Rc.No.60/2022 dated 09.02.2023 issued by the 5th Respondent without issuing any show cause notice in respect of Petitioner's Sweet preparing unit situated on Bus stand to MPDO Office Road, behind the hospital road, Ponduru Gram Panchayat, Ponduru Village and Mandal, Srikakulam District as illegal, arbitrary, unjust, irrational and violative of principles of natural

justice as also violation of Article 19(1)(g) of the Constitution of India and consequently direct the Respondents not to interfere with the Petitioner's Sweet preparing unit situated on Bus stand to MPDO Office Road, behind the hospital road, Ponduru Gram Panchayat, Ponduru Village and Mandal, Srikakulam District and pass

IA NO: 1 OF 2023

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 direct the Respondents not to interfere with the Petitioner's Sweet preparing unit situated on Bus stand to MPDO Office Road, behind the hospital road, Ponduru Gram Panchayat, Ponduru Village and Mandal, Srikakulam District and pass

IA NO: 2 OF 2023

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 allow the present petition for impleadment and to be arrayed as a respondent No.6 i.e., Allamsetty Ravi S/o Appa Rao, aged about 55 years, Occupation: Government Teacher, R/o H.No.2- 895, Hospital Street, Ponduru, Srikakulam District to this W.P.No.11074/2023 and consequential amendments in the I.A pending in the writ petition pass

Counsel for the Petitioner:

1.P RAJKUMAR

Counsel for the Respondent(S):

- 1.Yarraguntla.Koteswara Rao, Standing Counsel For Zilla Praja Parishads, Mandal Praja Parishads and Gra
- 2.GP FOR PANCHAYAT RAJ RURAL DEV
- 3.BOLLA VENKATA RAMA RAO
- 4.G ANANDA RAO

The Court made the following:

::ORDER ::

Heard Sri P.Raj Kumar, learned counsel for the petitioner, Sri P.Rajesh Kumar, learned Assistant Government Pleader for Panchayat Raj and Rural Development for the respondents 1 to 4, Sri Chaitanya, learned counsel representing Sri Y.Koteswara Rao, learned Standing counsel for the 5th respondent, and Sri G.Ananda Rao, learned counsel for the 6th respondent.

2. Assailing the notice *vide* R.C.No.60/2022 dated 09.02.2023 (Ex.P3), issued by the Panchayat Secretary of the 5th respondent, as illegal, arbitrary

and a violation of Principles of Natural Justice, and Article 19(1)(g) of the Constitution of India, the above writ petition was filed.

3. The petitioner, a permanent resident of Ponduru Village and Mandal, has been eking out his livelihood by preparing and selling sweets, filed the above writ petition.

4. The facts, in brief, as set out in the writ affidavit are as follows:-

The petitioner took a small portion from one Sri Dunna Surya Prakesh of Ponduru Village on rent to run a sweet shop. The said unit is located behind the hospital road, on the road leading from the Bus Stand to the MPDO Office, Ponduru. The petitioner got the required license from the 5th respondent to run the sweet shop. The petitioner has been using wood powder and corn waste to ignite the oven, as it is cost-effective. No smoke whatsoever would be emanated. The petitioner had taken all precautionary measures while preparing the sweets. The unit is not causing any inconvenience to the public. He also erected a stack in order to prevent the spreading of smoke in any way.

5. Be that as it may, the Panchayat Secretary of the 5th respondent issued a notice *vide* R.C.No.60/2022 dated 31.01.2023 (Ex.P2), calling upon the petitioner to close the unit within forty-eight hours. Thereafter, the Panchayat Secretary of the 5th respondent issued a notice dated 09.02.2023 (Ex.P3). The petitioner submitted a detailed explanation dated 22.02.2023 (Ex.P4). The Panchayat Secretary of the 5th respondent and other officials inspected the

premises on 11.12.2022, based on the complaint made by the encroachers. In the notice dated 09.02.2023 (Ex.P3), the petitioner was directed to use LPG gas to prepare the sweets. However, the authorities of the Pollution Control Board advised using cleaner fuels to avoid smoke nuisance. Without considering the same, the notice was issued.

6. An interim order was granted on 03.05.2023 directing the authorities not to enforce the notice dated 09.02.2023 (Ex.P3).

7. The petitioner filed an additional affidavit *vide* W.P.USR.No.29808/2026 dated 07.03.2026, after the inspection by the officials of the Andhra Pradesh Pollution Control Board. In para-5 of the affidavit, it was pleaded that the petitioner has been running the unit by taking the premises on lease from one Smt. Malipeddi Parvathi. The petitioner reiterated the averments in the writ affidavit. The petitioner also filed a memo *vide* W.P.USR.No.11532/2026, by annexing the receipts issued by the Gram Panchayat to run the shop.

8. The 6th respondent, a resident of Ponduru Village, filed I.A.No.2 of 2023 to come on record. The said interlocutory application was ordered on 17.09.2024.

9. Thereafter, the 7th respondent, Andhra Pradesh Pollution Control Board, was impleaded *suo-moto* by an order dated 08.12.2025.

10. A counter-affidavit was filed on behalf of the 5th respondent. It was contended, *inter alia*, that the 6th respondent and others made a complaint dated 19.12.2022 about the Karkhana located in a residential area and the

nuisance caused thereby. The Panchayat Secretary of the 5th respondent issued notices dated 20.12.2022, 31.01.2023 and 09.02.2023. The 3rd respondent *vide* Rc.No.3674/2022/P7 dated 19.12.2022 (Ex.R7), issued a memo to the Panchayat Secretary of the 5th respondent to issue instructions to the sweet-making unit with reference to the observations of the Andhra Pradesh Pollution Control Board, Srikakulam. As such, the notices dated 31.01.2022 (Ex.P2) and 09.02.2023 (Ex.P3) were issued. The petitioner is selling sweets in a shop named "Meenakshi Sweets Centre". The tax receipts or license produced by the petitioner relate only to the said shop and not to the Karkhana. Neither the petitioner paid tax, nor the 5th respondent collected tax in respect of the Karkhana where the sweets are being prepared.

11. The 6th respondent filed a separate counter-affidavit. It was contended, *inter alia*, that he, along with other residents of Gadala Street and Hospital Street of Ponduru Village, filed a complaint on 19.12.2022 in Spandana regarding the smoke emitted from the sweet preparation unit run by the petitioner. The petitioner has been using wood powder and corn waste to ignite the oven. The unit/karkhana is located within a residential area and has been causing nuisance and also health problems to the residents in the vicinity. The Environmental Engineer, Andhra Pradesh Pollution Control Board, Regional Office, Srikakulam, instructed the District Panchayat Officer to direct the petitioner to use cleaner fuels to avoid smoke nuisance to the surrounding residents. Thereafter, the notice dated 09.02.2023 (Ex.P3) was

issued. The petitioner has been running the unit without a license. Ex.P1 is not a license. Eventually, prayed the court to dismiss the writ petition.

12. Learned counsel for the petitioner and learned counsel for the respondents reiterated their contentions as per the averments made in the writ affidavit and the counter-affidavits.

13. **The point for consideration is:**

Whether the notice dated 09.02.2023 (Ex.P3) issued by the Panchayat Secretary of the 5th respondent is legally sustainable?

14. Shorn of all details, there is no dispute that the petitioner is manufacturing the sweets by taking premises on lease from Smt. Malipeddi Parvathi. The said premises located in a residential area. The petitioner is selling sweets by running a shop under the name "Meenakshi Sweets Centre". Ex.P1 and the receipts filed along with the memo dated 31.01.2022 issued by the Panchayat Secretary of the Gram Panchayat relate to the said shop and not to the manufacturing unit where the sweets are being prepared.

15. It is also an undisputed fact that, as per the averments made in the writ affidavit, the petitioner has been using wood powder and corn waste to ignite the oven. The petitioner has also erected a stack.

16. In para-3 of the writ affidavit, the petitioner spelt out that he has been preparing and selling sweets in Ponduru Village for the last twenty years and had taken a small portion from one Sri Dunna Surya Prakesh of Ponduru

Village on rent to run the sweet shop. In the additional affidavit filed by the petitioner *vide* W.P.USR.No.29808/2026 dated 07.03.2026, the petitioner pleaded that he has been running the manufacturing unit in premises taken on lease from Smt. Malipeddi Parvathi for more than ten years.

17. Thus, as seen from the statements, on oath, made by the petitioner in the writ affidavit and the other affidavit, the shop is different from the manufacturing unit where the sweets are being manufactured. In fact, the intelligent drafting of the affidavit, *prima facie*, does not reveal the manufacturing unit and the shop as separate entities. However, in the affidavit filed dated 07.03.2026, the petitioner made it clear that the manufacturing unit is being run in the premises belonging to one Smt. Malipeddi Parvathi. The petitioner, in the considered opinion of this court, should have disclosed all the facts vividly.

18. The petitioner contends that the Gram Panchayat has been collecting license fees. The fee collected by the Gram Panchayat and paid by the petitioner is only for the purpose of running the sweet shop. Thus, merely making payment of the fee to run the shop does not confer on the petitioner the benefit of manufacturing sweets on different premises. In fact, such a plea is misconceived. The petitioner has not obtained any license for manufacturing sweets. During the course of the argument, learned counsel for the petitioner contended that the petitioner made a representation to the District Collector on 30.03.2026 in PGRS. In fact, such a representation was

made after commencement of the arguments. The said representation was filed vide WPUSR 40415 of 2026 dated 29.04.2026.

19. In the case at hand, the authorities of the Pollution Control Board visited the unit and submitted the report. The report noted as follows:

“...the Board officials inspected the Sweet making (Karkana) on 05.01.2025 and observed the sweet making (Karkana) have been using the waste wood powder and corn waste instead of cleaner fuels (i.e., LPG) and provided stack with height of about 20 feet. The sweet Karkana is operating 2 to 3 hours daily and sweet Karkana is located at residential area. During the inspection, it was observed that initially, slightly smoke is generating from Karkana.

It is submitted that the A.P. Pollution Control Board is not issuing any kind of permission to sweet making (Karkana) and these are comes under commercial activities which can be enforced by local authorities only to avoid nuisances.”

20. In fact, the 6th respondent, along with the counter-affidavit, filed a communication from the officials of the Pollution Control Board to the District Panchayat Officer as Ex.R5 and Ex.R6. The Environmental Engineer, Andhra Pradesh Pollution Control Board, Regional Office, Srikakulam, observed that the Andhra Pradesh Pollution Control Board is not granting any kind of permission to the sweet-making unit (Karkana), and they come under commercial activities, which can be enforced by local authorities only to avoid nuisance. However, the authority requested the District Panchayat Officer,

Srikakulam, to instruct the sweet-making unit to change the fuel from wood powder and corn waste to LPG gas to avoid nuisance in the surrounding area.

21. The contention of the learned counsel for the 6th respondent is that huge smoke is emitting due to the preparation of the sweets, and it is causing a health hazard to the residents in the vicinity, which may not be appreciated by this Court due to the report by the Pollution Control authority. In fact, the report of the Pollution Control Board does not indicate the emission of huge amounts of smoke.

22. **Does such a report of the Andhra Pradesh Pollution Control Board entitle the petitioner to prepare the sweets without getting permission from the competent authority?**

Let this Court examine the relevant provisions in this regard. Section 119 of the Andhra Pradesh Panchayat Raj Act, 1994, which is relevant, is extracted herewith.

“Section 119: Purposes for which places may not be used without licence

The gram panchayat may notify in the prescribed manner, that no place within the limits of the village shall be used for any one or more of the purposes specified in the rules made in this behalf without a licence issued by the executive authority in the prescribed manner and except in accordance with the conditions specified in such licence:

Provided that no such notification shall take effect until the expiry of a period of sixty days from the date of publication.”

23. A plain reading of the section extracted *supra* would indicate that, without getting a valid license from the executive authority, the petitioner could not have converted the residential house into a manufacturing unit. As discussed *supra*, the premises/house, wherein the petitioner is manufacturing or preparing the sweets, is located in the midst of other residential houses. Hence, the petitioner should have obtained permission from the authority.

24. The State Government framed Rules while exercising the powers under Sec 263 (1) read with sections 119 and 120 of the Andhra Pradesh Panchayati Raj Act, 1994, the *Rules relating to levy of Licence Fees for grant of permission and licence in respect of machinery or manufacturing plants driven by electrical power/steam water or mechanical rules, 1966.* The Rules were framed to regulate the conditions of grant for licence for installation or manufacturing within the limits of Gram Panchayats.

25. Rule 3(n) of 1996 Rules which is relevant is extracted below:

“3. No place within the limits of Gram Panchayat shall be used for any one or more of the purposes as specified below without a licence issued by the executive authority.

The purposes for which places may not be used without licence are:—

...

(n) Preparing flour or articles made of flour for human consumption or sweetmeats;

...”

26. Section 31 of the Food Safety and Standards Act, 2006 prescribes the license and registration of food businesses. Section 2(n) of the Act defines food business means, any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of manufacture, processing, packaging, storage, transportation, distribution of food, import and includes food services, catering services, sale of food or food ingredients.

27. Thus, the Food Safety and Standards Act, 2006 mandates the registration and license from the Designating Authority to manufacture and to run the food business. However, in the case at hand, going by the averments in the affidavit, the petitioner, without registering and getting permission from the Designating Authority, has been carrying out the business. Thus, the petitioner violated the provisions of the Food Safety and Standards Act, 2006.

28. Thus, the discussion supra, this Court is of the considered opinion that the petitioner has been manufacturing the sweets without permission from the competent authority either under Section 119 of the Andhra Pradesh Panchayat Raj Act or the Designated Authority under Section 31 of the Food Safety and Standards Act, 2006.

29. **Should the show cause notice contain all the information vis-à-vis the infringements?**

A show-cause notice should contain the violations or infringements, enabling the recipient to submit a proper explanation. Such a course, if

adopted, would meet the requirements of the principles of natural justice. The law, on this aspect, is no longer *res integra*.

30. The Hon'ble Apex Court in ***Gorkha Security Services Vs. Govt. (NCT of Delhi)***¹, held that to fulfill the requirement of principles of natural justice, show cause notice should meet the following two requirements viz., (i) The material/grounds to be stated which according to the department necessitates an action; and (ii) Particular penalty/action which is proposed to be taken.

31. In ***Nasir Ahmad vs. Assistant Custodian General, Evacuee Property, Uttar Pradesh, Lucknow and Others***², the Hon'ble Apex Court held thus:

“It is essential for the notice to specify the particular grounds on the basis of which an action is proposed to be taken so as to enable the noticee to answer the case against him. If these conditions are not satisfied, the person cannot be said to have been granted any reasonable opportunity of being heard.”

32. In ***UMC Technologies Private Limited vs. Food Corporation of India and Others***³, the Hon'ble Apex Court held thus:

“At the outset, it must be noted that it is the first principle of civilised jurisprudence that a person against whom any action is sought to be taken or whose right or interests are being affected should be given a reasonable opportunity to defend himself. The basic principle of natural justice is that before adjudication starts, the authority concerned should give to the affected party a notice

¹ (2014) 9 SCC 105

² (1980) 3 SCC 1

³ (2021) 2 SCC 551

of the case against him so that he can defend himself. Such notice should be adequate and the grounds necessitating action and the penalty/action proposed should be mentioned specifically and unambiguously. An order traveling beyond the bounds of notice is impermissible and without jurisdiction to that extent.”

33. However, in the case at hand, the notices dated 31.01.2023 (Ex.P2) and 09.02.2023 (Ex.P3) do not indicate these violations, enabling the petitioner to submit an explanation. A show-cause notice should contain the violations, enabling the notice/recipient to submit a proper explanation. In notices dated 31.01.2023 (Ex.P2) and 09.02.2023 (Ex.P3), it was pointed out that the petitioner has been manufacturing the sweets by using wood powder and corn waste etc., due to the emission of smoke, the neighbors are suffering and hence directed the petitioner to close the unit within forty-eight hours or else to run the business by using LPG gas.

34. The notices, in this case at hand, do not indicate the violation of public health or any other statutory provisions. The petitioner, in his explanation, requested the Government to provide an alternative site or some time to shift the business. The petitioner has been carrying out the business by virtue of the interim order granted by this Court. This Court is also conscious that allowing the sweet manufacturing unit within the residential area, in the absence of any precautions by the manufacturer, will definitely cause inconvenience to the residents in the vicinity. However, it being a disputed question of fact, this Court is not recording any finding at this juncture.

35. **Whether the petitioner, the violator, is entitled to the relief from the equity court while exercising the jurisdiction under Article 226 of the Constitution of India.**

It is a settled principle of law that the illegality shall not be allowed to perpetuate. The petitioner has been manufacturing the sweets without getting the requisite permissions, as discussed supra. The contention of the learned counsel is that the livelihood of the petitioner will be put to jeopardy if the manufacturing unit closes, this court will not appreciate such a stance, keeping in view the principle that equity shall not override the law, and in fact, equity follows the law.

36. It is an established law that when there is a conflict between law and equity, the law must prevail. The statutory provisions may cause hardship or inconvenience to a particular party, but the Court must enforce it giving full effect to the same. The Latin maxim "*dura lex sed lex*", which means "the law is hard, but it is the law" stands attracted. Equity can only supplement the law, but it cannot supplant or override it. The legal position on this aspect is discussed infra.

37. In ***Anurag Kumar Singh vs. State of Uttarakhand***⁴, the Hon'ble Supreme Court held thus:

"16. Judicial discretion can be exercised by a court only when there are two or more possible lawful solutions. **In any event, courts cannot give any direction contrary to the**

⁴ (2016) 9 SCC 426

statute or rules made thereunder in exercise of judicial discretion. It will be useful to reproduce from *Judicial Discretion* (1989) by Aharon Barak which is as follows:

“Discretion assumes the freedom to choose among several lawful alternatives. Therefore, discretion does not exist when there is but one lawful option. In this situation, the Judge is required to select that option and has no freedom of choice. No discretion is involved in the choice between a lawful act and an unlawful act. The Judge must choose the lawful act, and he is precluded from choosing the unlawful act. Discretion, on the other hand, assumes the lack of an obligation to choose one particular possibility among several.”

38. In ***Madamanchi Ramappa v. Muthaluru Bojjappa***⁵, the Hon’ble Apex Court observed as follows:

“What is administered in courts is justice according to law and considerations of fair play and equity, however important they may be, must yield to clear and express provisions of the law.”

39. In ***P.M. Latha vs. State of Kerala***⁶, the Hon’ble Apex Court observed as follows:

“13. Equity and law are twin brothers and law should be applied and interpreted equitably *but equity cannot override written or settled law.*”

⁵ AIR 1963 SC 1633

⁶ [(2003) 3 SCC 541

40. In ***Laxminarayan R. Bhattad vs. State of Maharashtra***⁷, the Hon'ble Apex Court observed as follows:

“73. It is now well settled that when there is a conflict between law and equity the former shall prevail.”

41. In ***E. Palanisamy v. Palanisamy***⁸, the Hon'ble Apex Court observed as follows:

“The rent legislation is normally intended for the benefit of the tenants. At the same time, it is well settled that the benefits conferred on the tenants through the relevant statutes can be enjoyed only on the basis of strict compliance with the statutory provisions. Equitable consideration has no place in such matters.”

42. By applying the equity principle, if the petitioner is allowed to continue manufacturing the sweets in the premises, noted *supra*, without a valid permission from the competent authority, this Court, indeed, confers a premium on a violator of the Statutes. Such a premium shall not be granted at the cost of the health of the public. The petitioner, a businessman, cannot claim any equity in this regard. Had the petitioner made any application, the authority concerned would have considered the same. However, till recently, as per the counsel for the petitioner, no such application was made. However, if the petitioner makes such an application, the authority concerned may consider the same strictly, as per the law. At the same time, till a permission is granted, the petitioner shall not be allowed to manufacture the sweets.

⁷ [(2003) 5 SCC 413]

⁸ [(2003) 1 SCC 123]

43. Of course, this Court is conscious that the petitioner cannot be relegated to a stage worse than the stage when he approached the Court. In the absence of any interim order by the Court, the authority would have seized the premises or ought to have passed other restraint orders. But for the interim order, the petitioner has been manufacturing sweets to date.

44. When the violations are writ large, the Court shall not allow the violations to perpetuate. In the said circumstances, in the considered opinion of this Court, while exercising the extraordinary jurisdiction, this Court definitely directs the petitioner not to perpetuate the illegality by continuing the manufacture of sweets.

45. In ***M.C. Mehta v. Union of India***⁹, the Apex Court held that the Court cannot exercise discretion in such a manner that would perpetuate an illegality. It was held:

“41. In *M.I. Builders (P) Ltd. v. Radhey Shyam Sahu* [(1999) 6 SCC 464] this Court observed that no consideration should be shown to a builder or any other person where the construction is unauthorised. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles. Judicial review is permissible if the impugned action is against law or in violation of the prescribed procedure or is unreasonable, irrational or mala fide. In para 73, this Court reiterated that in numerous decisions, it has been held that no consideration should be shown to the builder or

⁹ (2004) 6 SCC 588

any other person where construction is unauthorised. This dicta is now almost bordering the rule of law. **A discretion which encourages illegality or perpetuates an illegality cannot be exercised.** In *M.I. Builders (P) Ltd. v. Radhey Shyam Sahu* [(1999) 6 SCC 532 (connected order)] **this Court declined to come to the aid of a law-violator.**”(emphasis is mine)

46. Given the facts and circumstances of the case, the writ petition is disposed of, with the following directions:

i) The notices dated 31.01.2023 (Ex.P2) and 09.02.2023 (Ex.P3) are hereby set aside.

ii) However, this order will not preclude the 5th respondent, Gram Panchayat, from issuing a fresh notice pointing out the violations, if any, enabling the petitioner to submit a proper explanation. In such a case, the authority shall provide a reasonable time to submit an explanation.

iii) Keeping in view the doctrine that illegality shall not be perpetuated, since the petitioner continues the manufacturing of sweets without permission, the 5th respondent shall ensure that the petitioner shall not manufacture the sweets without statutory permissions.

iv) Till the petitioner gets the licences or permissions, the petitioner shall not manufacture the sweets in the premises located in the midst of other residential houses, referred to supra.

v) If the petitioner makes an application before the appropriate authority, the authority shall consider the same strictly as per the Law.

vi) There shall be no order as to costs.

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

Date: 07.05.2026
SNI

JUSTICE SUBBA REDDY SATTI

13

THE HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

WRIT PETITION NO: 11074 OF 2023

Date: 07.05.2026
SNI