
(2005) 08 AP CK 0002

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1463 of 2005

B. Bala Seshanna

APPELLANT

Vs

District Collector and Others

RESPONDENT

Date of Decision : 22-08-2005

Acts Referred:

Citation : (2005) 5 ALD 727 : (2005) 5 ALT 637 : (2005) 3 APLJ 104

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : V. Venkatarami Reddy, for the Appellant; Government Pleader for Civil Supplies for Respondent Nos. 1 to 3 and 5 and E. Ayyapu Reddy, for the Respondent No. 4, for the Respondent

Final Decision : Allowed

Judgement

V.V.S. Rao, J.—The petitioner assails the orders dated 9.12.2004 passed by first respondent herein whereby and whereunder orders passed by second respondent were stayed pending consideration of revision petition filed under Clause 21 of A.P. State Public Distribution System Control Order 2001 (2001 Control Order) against orders of second respondent. The order is assailed mainly on the ground that fourth respondent, who is a temporary fair price shop dealer of U. Bollavaram Village has no locus standi to invoke the revisional jurisdiction of first respondent. Strong reliance is placed on a decision in Alapati Soma Sekhar Vs. Collector and Others, .

2. The fact of the matter, in brief, may be noticed. The petitioner was appointed as fair price shop dealer of U. Bollavaram Village sometime prior to 1975. Third respondent herein suspended the authorization on 10.8.2001 on the allegations that he was absent on 1.8.2001 at the time of inspection, that he diverted thirty quintals of rice to black market, that he contravened the conditions of authorization and that he has not taken release order for essential commodities. After suspending petitioner, fourth respondent was appointed as temporary fair price shop dealer by proceedings dated 7.2.2002 passed by third respondent.

The petitioner preferred appeal before second respondent, who by order dated 9.12.2004 took a lenient view, imposed fine of Rs. 800/- and forfeited security deposit and restored authorization of the petitioner. The petitioner has been reinstated by third respondent by order dated 7.1.2005. Aggrieved by this, fourth respondent preferred revision under Clause 21 of the 2001 Control Order, who stayed the proceedings of second respondent by the impugned order.

3. Learned Counsel for the petitioner placed strong reliance on the decision in *Alapati Soma Sekhar v. Collector, Krishna District* (supra) in support of the contention that there is no jurisdiction to first respondent to entertain revision on behalf of temporary fair price shop dealer. Per contra, learned Counsel for fourth respondent, Sri E. Ayyapu Reddy submits that after coming into force of 2001 Control Order with effect from 6.4.2002 fourth respondent, who was appointed as temporary fair price shop dealer, shall be deemed to be permanent dealer and therefore her appointment cannot be treated as temporary dealership.

4. The learned Counsel, however, does not dispute the legal position that Clause 21 of the 2001 Control Order does not give any remedy of revision to temporary fair price shop dealer and that such remedy is available only to a person who is aggrieved by the order of the Joint Collector passed under Clause 20 in appeal.

5. The only point that falls for consideration, in the background of facts and in the light of the submissions made across the Bar, is whether temporary fair price shop dealer appointed under A.P. Scheduled Commodities (Regulation and Distribution by Card System) Order 1973 (1973 Control Order) shall be deemed to be a permanent fair price shop dealer within the meaning of 2001 Control Order.

Authorized fair price shop is defined in Clause 2(6) as under:

2(6) "Authorised Fair Price Shop" means a retail dealer appointed or authroised or approved by or on behalf of the State Government and includes a shop set up by the State Government or a State Government Undertaking or a Corporation wholly owned by the State Government or a Co-operative Society for the benefit of Scheduled Castes or Scheduled Tribes under a Government Scheme under Clause (5) for sale of all or any of the Scheduled Commodities.

Explanation :-On the commencement of this order in any area every dealer who was appointed, authorized or approved by or on behalf of the State Government (as approved retailer or by any other designation and whose appointment) authorization or approval was in force in respect of any of the Scheduled Commodities immediately before such commencement, shall be deemed to be an authorized fair price shop dealer in that area for supply of those commodities for the purpose of this order unless otherwise directed by the State Government or the Collector concerned.

6. A reading of the explanation would show that every dealer on the commencement of 2001 Control Order shall be deemed to be authorized fair

price shop dealer for the purpose of Control Order. The term "dealer" is not defined either in 1973 Control Order, or in 2001 Control Order. For the purpose of Clause 3 of the 1973 Control Order, a person, who is given authorization to run fair price shop owned by the State Government is treated as dealer of the fair price shop. The appointment of fair price shop dealer is governed by various executive instructions issued from time to time under 1973 Control Order. Even after coming into force of 2001 Control Order, Clause 5 read with Annexure to the said Control Order stipulates the procedure to be adopted before the appointment of dealer. This procedure both under 1973 Control Order and 2001 Control Order commence with the decision to appoint dealers for vacant shops/new shops, inviting applications, conducting interviews and then selecting the dealers in strict compliance with the Rules in the Control Order as well as executive instructions (guidelines) issued by the Government from time to time. Unless and until such elaborate procedure is adopted, a person appointed -may be temporarily; cannot be deemed to be fair price shop dealer within the meaning of the term as used in 1973 Control Order and 2001 Control Order.

7. As directed by this Court the original file from the office of third respondent is placed before this Court. Proceedings of third respondent which are found at Page 73 of the file would clinchingly show that the fourth respondent was appointed as fair price shop dealer for U. Bollavaram Village on temporary basis until further orders. Therefore, she cannot be treated as authorized fair price shop dealer within the meaning of Clause 2(6) of the 2001 Control Order. There is yet another reason which supports the view supra. In 1973 Control Order Sub-clause (4) of Clause 3, which enables the appointing authority the Revenue Divisional Officer/Sub-Collector to appoint a dealer stipulates that where a fair price shop dealer has been convicted, appointing authority shall cancel the authorization. Proviso to Clause 3(4), however, provides that when the conviction is set aside in appeal, on application made by the dealer whose authorization was cancelled, the appointing authority may re-issue authorization to such person. This only means that such re-issue of authorization would be in relation to a fair price shop from which the dealer was removed by reason of the conviction. The position in 2001 Control Order is also same by reason of Clause 5(4). Applying the same analogy, if the contention of the fourth respondent is accepted, an authorized dealer, whose authorization is suspended/ cancelled cannot get benefit even if he succeeds in appeal or revision which are now conferred as a matter of right on a fair price shop dealer, who suffered disciplinary action at the hands of appointing authority. In this case, precisely that is what is happened. On certain irregularities, petitioner's authorization was cancelled which was set aside by the appellate authority, second respondent herein. If fourth respondent is considered as having been appointed on permanent basis, there would not be any use for the petitioner in succeeding before the appellate authority. The submission is therefore devoid of merits.

8. Clause 21 of the Control Order 2001, which provides for revision is in the following terms:

21. Revision: (i) Any person aggrieved by an order under Clause 20(1)(i) may, within thirty days from the date of communication to him/her of such an order, prefer a revision to the District Collector concerned.

(ii) Any person aggrieved by an order under Clause 20(1)(i) may within thirty days from the date of communication to him/her of such an order, prefer a revision to the Commissioner of Civil Supplies, Andhra Pradesh, Hyderabad. Provided that no order shall be passed under this clause unless the aggrieved person has been given a reasonable opportunity of representing his/ her case:

Provided that no order shall be passed under this clause unless the aggrieved person has been given a reasonable opportunity of representing his/her case.

(iii) Pending disposal of the revision, the District Collector in the districts and the Commissioner of Civil Supplies in respect of Hyderabad District, may direct that the order under revision shall not have effect until the revision is disposed of.

9. The above clause is in pari materia with Clause 18 of 1973 Control Order. Said clause enables any person aggrieved by any order under Clause 20(1)(i) to prefer a revision to the District Collector within thirty days. Clause 21(1) gives right of appeal to any person who is aggrieved by any order under Clause 5. Fourth respondent is not a person who can be said to be aggrieved by order passed by Joint Collector. When she cannot be said to be aggrieved person, qua order passed by Revenue Divisional Officer, she has no locus standi. Indeed, this question is no more res integra. In Alapati Soma Sekhar v. Collector, Krishna District (supra), this Court after referring to Division Bench judgment in W.A. No. 1146 of 1995 dated 19.3.1997 observed as under:

This Court, by order dated 1.9.1995, held that a temporary dealer has no locus standi to file a revision petition before the Collector. W.P. No. 15628 of 1995 was accordingly allowed. Aggrieved by the order dated 1.9.1995, the fifth respondent preferred writ appeal before a Division Bench of this Court. The writ appeal being W.A. No. 1146 of 1995 was dismissed along with the other appeal by order, dated 19.3.1997 observing as under.

Having perused the impugned judgments, we see nothing which would require reiteration of the facts or examination of the principles of law. What is stated, however, in the impugned judgments in respect of the right of the appellants to claim fair price shop dealerships shall not be extended to mean that in case the order in revision goes against them they shall have no locus standi to challenge the same in accordance with law. The petition in revision, if filed on behalf of any of the appellants, shall proceed in accordance with law.

I have already referred to the judgment of the learned Single Judge as well as the judgment of the Division Bench. This Court categorically laid down that the fifth respondent being a temporary dealer has no locus standi to invoke the revisional jurisdiction of the District Collector whereas the District Collector proceeded on a wrong footing that such revision is maintainable by the fifth

respondent. Be that as it may, when the Joint Collector allowed the appeal filed by the petitioner and directed the Sub-Collector to restore the fair price shop dealership, the District Collector could not have interfered with the order of the Joint Collector without issuing a notice to the petitioner.

10. Viewed from any angle it was improper for first respondent to exercise revisional jurisdiction and stay the matter that too without issuing any notice to the petitioner.

11. Accordingly, the writ petition is allowed declaring that first respondent has no jurisdiction to entertain revision under Clause 21 of 2001 Control Order filed by temporary price shop dealer (fourth respondent). The authorities shall forthwith implement the orders of second respondent dated 9.12.2004 in RC No. CS .3/565/04. There shall be no order as to costs.