
(1997) 04 AP CK 0056
In the Andhra Pradesh High Court
Case No : Writ Petition No. 3664 of 1990

B. Suresh

APPELLANT

Vs

Dist. Collector and Another

RESPONDENT

Date of Decision : 19-04-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 226

Citation : (1997) 4 ALT 481 : (1997) 2 APLJ 332

Hon'ble Judges : T. Ranga Rao, J;B. Subhashan Reddy, J

Bench : Division Bench

Advocate : M.V. Durga Prasad, for the Appellant; Government Pleader for Civil Supplies, for the Respondent

Judgement

B. Subhashan Reddy, J.—This batch of writ petitions raises an important point for consideration as to whether a notice is necessary before bifurcating the fair-price shops held by the petitioners. The petitioners hold authorisations to run the fair-price shops and specified number of cards are attached to their respective fair-price shops. The Government has framed guidelines for creating or bifurcating fair-price shops and one of the considerations is the population being minimum of 1650 persons for one shop. The Government also formulated a policy that each and every village should have separate fair-price shop, as hitherto, there was one fair-price shop for more than one village. Another guideline is that the fair-price shop should be within a distance of 1 k.m from the residences of the cardholders. May be, there are special circumstances for consideration as to whether a separate shop to Harijan Basthi in the village has to be setup. In so far as tribal areas are concerned, even if population is 1000, fair-price shop has to be set up. As already stated above, for non-tribal areas, the population is 1650 for each shop. The other prime consideration is that shop must be economically viable. All these factors which are several in number cannot be considered independently. It has to be interpreted and understood in a large sense after reading of the said guidelines together and after reconciling them. If read so, it only means that one family may comprise five persons and calculating 330 cards

multiplied by 5, it comes to 1650 persons. That is guideline and we cannot say that the said guideline is either arbitrary and unreasonable. Economic viability also is a matter of policy and cannot be judged having regard to each fair-price shop dealer. Survey has been made in this regard and the first condition being that each village should have a fair-price shop even if the population of non-tribals is less than 1650, even we go to the extent of saying that even the village has got 500 population, a fair-price shop is a must, because it is salutary to have one fair-price shop for a village as the prime object and intendment of setting up fair-price shop is to have easy access to the essential commodities at controlled prices. As such, it is impracticable and also causes hardship, if one fair-price shop is set-up for group of two or three villages. As such, maintaining one fair-price shop for each village, the population has to be arrived at and even if it is just more than 1650 does not mean to say that a separate fair-price shop is necessary unless a separate locality has emerged in the village which is at a distance of more than 1 k.m. from the other residences. Same thing is applicable to tribal areas also.

2. With regard to economic viability, there cannot be any assurance that each fair-price shop dealer will get sufficient income for meeting his ends. The issue has to be standardised generally and not specifically taking each and every fair-price shop dealer into consideration. As such, we are of the opinion that the guidelines framed are neither arbitrary nor unreasonable.

3. The second is the prime question viz., with regard to the observance of Principles of Natural Justice. The question is as to whether notice is necessary before bifurcating a shop which results in taking away some cards from the existing fair-price shop dealers. Government's contention is that such a notice is not necessary for the reason that the fair-price shop dealers do not have any vested right and that it is the property of the Government. Decisions rendered in Writ Appeal No. 267/91, W.P.No. 11176/91, W.Ps. 7591 & 7597/92, W.P. 2032/94 and W. A.No. 130/92 are cited by Ms. Rohini, the learned Government Pleader in support of her argument that no notice is necessary before bifurcating the shops. She also submitted that the judgments rendered by the learned single Judges in W.P.No. 2032/94 has been upheld in W.A.No. 1250/96 and that of W.P.No. 7591 and 7592/92 has been upheld by the Division Bench in W.A.No. 652/92. We have perused all these orders. All the above decisions which have been cited speak about the fact that it is the Government's supreme right with regard to the grant of authorisation to run the fair-price shop and that Government is entitled to formulate the guidelines in the interests of the cardholders, but the said judgments did not consider in the context of the requirement of observance of Principles of Natural Justice to apprise the authorities so as to guide them in arriving at a right decision to be in consonance with the guidelines enunciated by the Government mentioned above. To be more clear, we hold that even though the fair-price shop dealers do not have any fundamental right, but once law is framed to grant rights of running the fair-price shops subject to conditions and regulations, the fair-price shop dealers do get a right to set-forth their

objections, if the authority is trying to violate the guidelines or if the authority is misguided and if not guided properly will fall into error of judgment. We have also considered this aspect from another angle, as if the Principles of Natural Justice as stated above are observed, then this Court in the event of challenge, will only see as to whether there is enough material to suspend the order vis-a-vis the guidelines and objections raised therein or otherwise, as has happened in the judgments cited before us, each and every case has to be adjudicated on facts which is not warranted for these types of cases and more so, in our extraordinary power under Article 226 of the Constitution of India. Further, to judge as to whether the guidelines are being violated or not is on the touchstone of not only Article 19(1)(g) of the Constitution of India, but also Article 14 of the Constitution of India as even in the trade of intoxicants in State of M.P. and Others Vs. Nandlal Jaiswal and Others, the Supreme Court held that there is no fundamental right for claiming the right to trade in intoxicants, but, when the State decides to grant such right or privilege, the State cannot escape the rigour of Article 14 of Indian Constitution.

4. While it is true that the fair-price shops are created under the Andhra Pradesh Scheduled Commodities (Regulation of Distribution by Card System) Order, 1973 and the authorisations are issued under the said provisions and that the essential commodities are supplied by the Government and the function of the fair-price shop dealers is only to distribute the same at the prices fixed by the Government and take commission which is specified, it cannot be denied that they get some right the moment the authorisations are issued and some interest is also created in them, may be, limited in nature. The fair-price shop dealers once granted authorisation, are entitled to run the fair-price shop by observing the conditions stipulated therein and any action affecting their rights will certainly result in civil consequences. While we do not allow the fair-price shop dealers to agitate with regard to economic non-viability, if the cards are taken out, but to the extent of apprising the authorities that their proposed action will offend the guidelines, their participation is necessary. They can always agitate that the bifurcation will violate the guidelines and that the facts on which the bifurcation is sought to be done do not exist or to some extent, they are not existent. To this extent of participation, there cannot be any denial and if it is denied, there may be infraction of Principles of Natural Justice. Minimum is the issuance of notice to them to file objections in the light of the guidelines with regard to observance of the same or existence or non-existence of the facts supporting the bifurcating by giving a specified time for filing such objections. In fact, this kind of limited opportunity will help in reduction of litigation as in almost all the cases, the point raised is that of the Principles of Natural Justice stating that the guidelines are being violated. Only in a very less number of cases, the economic viability issue is raised. We are making it clear that economic viability is not an issue available to any of the fair-price shop dealers including the petitioners for contest and the only area of contest or objection is with regard to the observance or otherwise of the guidelines enunciated in Government Memo No. 40829/ CS-rV-1/91-1, dated

26-7-1991 or any other future guidelines which may be issued from time to time henceforth

5. The writ petitions are disposed of accordingly and the respondents shall follow the directives issued above and dispose of the matters as expeditiously as possible. No costs.