

(2010) 03 AP CK 0029

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 5142, 5143 and 5144 of 2010

Bathula Annapurna and Others

APPELLANT

Vs

Tahsildar and Others

RESPONDENT

Date of Decision : 05-03-2010

Acts Referred:

Citation : (2010) 3 ALD 741 : (2010) 3 ALT 699

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

Bench : Single Bench

Advocate : V.H.V.R.R. Swamy, for the Appellant; A.G.P. for Civil Supplies, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—As similar relief is sought and a similar question is raised, the three writ petitions are being disposed of by this common order.

2. The petitioner in W.P. No. 5142 of 2010 is widow of late Bathula Srinivasu. He was given kerosene hawker licence under the Andhra Pradesh Petroleum Products (Licensing and Regulation of Supplies) Order 1980 (Petroleum Control Order). The same was valid upto 31.12.2011. The licensee died on 03.10.2009. Petitioner contends that as a legal heir she is entitled for grant of kerosene hawker licence. Therefore, she filed writ petition seeking a direction to respondents to appoint petitioner as kerosene hawker.

3. In other cases, petitioners are also widows of kerosene hawkers, who died while licences were in force. They also seek similar direction to respondents to appoint them as kerosene hawkers.

4. The Counsel for petitioners relies on Government Memo No. 47228/CS.II.89.I F&A (CS) Dept, dated 08.8.1989, which reads as under.

Government Memo No. 47228/CS.II.89.I F&A (CS) Dept., Dated 08.8.1989

Sub: Civil Supplies - Appointment of legal heirs of hawkers in the Event of

hawkers become old or their demise - Reg.

A representation has been made by the hawkers Association requesting for appointing the legal representatives as licencees in cases where the hawkers die or they become old.

This matter was examined and it is ordered that in case the hawkers die, the legal heir shall be eligible for transfer of the licence in his name, provided the legal heir proves this fact to the satisfaction of the licensing authority with all necessary evidence. In case the hawker becomes incapable of handling the business, due to his old age, the licence can be transferred to the legal heir provided he proves this fact to the satisfaction of the licensing authorities with all necessary evidence.

Transfer of licences in all other cases should not be done.

R. Kodandarama Reddy For Ex-Officio Secretary to Government

5. The Counsel also relies on unreported judgments of this Court in Vajendla Koteswara Rao v. The Mandal Revenue Officer, Ongole Mandal W.A. No. 101 of 1999, dated 05-4-1999, Takuri Tulasibai v. The Joint Collector, Krishna W.P. No. 21862 of 1999, dated 15-10-1999 and Jujjavarapu Prabhakar Rao v. The Mandal Revenue Officer, Vijayawada Rural Mandal W.P. No. 19988 of 2006 and batch, dated 20-11-2007.

6. Opposing the admission of writ petitions, the Assistant Government Pleader for Civil Supplies relies on Clause 5(12) of Andhra Pradesh State Public Distribution System (Control) Order, 2008 (2008 Control Order) and a decision rendered by me in Meherunnisa Begum Vs. Mandal Revenue Officer and Another,

7. Clause 2(i) of 2008 Control Order defines "Hawkers" as meaning a retail dealer appointed or authorized or approved by or on behalf of the State Government to deal exclusively Public Distribution System kerosene for sale to the card holders and stationed at fair price shop attached. There is no dispute, 2008 Control Order covers issue of authorization, inter alia to hawkers and the matters connected therewith. Clause 5(12) thereof reads as under.

5. Issue of Authorisation to Fair Price Shops, Nominated Retailers, Hawkers and Establishment:

(12) In the event of the death of the Fair Price Shop dealer/Nominated Retailer/Hawker, the authorization issued shall stand cancelled and the legal heirs of the deceased are not entitled to transfer of authorization.

8. Therefore, on a plain reading of Clause 5(12), it comes to conclusion that in the event of death of hawker, authorization issued shall stand cancelled and the legal heir of deceased hawker is not entitled to transfer of authorization.

9. The order in Vajendla Koteswara Rao (1 supra) shows that after death of licensee, the authorities themselves granted licence to widow on compassionate

grounds and this Court did not find fault with the same. In Takuri Tulasibai (2 supra) learned Single Judge followed Vajendra Koteswara Rao (1 supra). The order in Jujjavarapu Prabhakar Rao (3 supra) does not lay down any principle that the legal heirs including widow of the deceased kerosene hawker should be granted licence as of right. Therefore, these decisions are of no help to petitioners.

10. The Government Memo dated 08.8.1989 extracted herein above was issued when Andhra Pradesh Scheduled Commodities (Regulation of Distribution by Card System) Order, 1973, was in force and the said Control Order does not prohibit the transfer of authorisation. Perhaps, for that reason the Government ordered that the legal heirs shall be eligible for transfer of the licence in the event of hawkers becoming old or in the event of their demise. The situation after coming into force of 2008 Control Order is different and as seen above Clause 5(12) thereof specifically prohibits the transfer of authorization in favour of legal heirs and indeed in the event of death of kerosene hawker, the licence shall stand cancelled.

11. The position under Petroleum Control Order is no different. In Meherunnisa Begum (4 supra), considering the subsequent Government Memo dated 15.6.1998, this Court held that, "the legal heirs of kerosene hawker cannot claim transfer of licence to them." The relevant paragraphs from the judgment reads as under.

Learned Government Pleader for Civil Supplies brought to my notice a judgment of Division Bench of this Court in Writ Appeal No. 1210 of 2002, dated 31.10.2002 wherein subsequent Memo No. I655/C.S.II/98-1, dated 15.6.1998 was considered by this Court. Another Division Bench of this Court, to which I was a Member, in Writ Appeal No. 1244 of 1999, dated 31.8.1999, held that transfer of hawker's licence is not permissible. In subsequent Memo dated 15.6.1998 having regard to judgment of this Court in Writ Petition No. 8201 of 1994, dated 18.3.1996 the Government ordered as under:

In the reference cited, orders were issued that in case a kerosene hawker dies, the legal heir shall be eligible for transfer of the licence in his name, provided the legal heir proves this fact to the satisfaction of the licensing authority with all necessary evidence.

The Hon'ble High Court of A.P., Hyderabad in W.P. No. 8201 of 94 on 18.3.1996 ordered that licence is not transferable, as it is only a licence in favour of the person. The ownership of licence, therefore, cannot accrue to his legal heirs.

In the light of the orders passed by the Hon'ble High Court of A.P., the orders issued in the references cited are hereby withdrawn with immediate effect.

All the Collectors, Chief Rationing Officer, Hyderabad are informed that in future, there shall no transfer of a licence (whether retailers or hawkers) to the legal heirs in the event of demise of the licence holder.

The above instructions shall be followed scrupulously.

12. The Division Bench in Writ Appeal No. 1210 of 2002, dated 31.10.2002 held as under:

We have already referred to the Division Bench judgment of this Court in Writ Appeal No. 1244 of 1999, dated 31.8.1999 wherein it is held that transfer of licence for sale of kerosene is not permissible in law and that a person cannot have a hereditary claim by privilege whatsoever. In our opinion, the licence issued in the name of the respondent writ petitioner's husband cannot be transferred in the name of the respondent-writ petitioner as it is against the Government Memos issued in this regard. This apart, it is also a policy decision of the Government and the same being not against public policy, the learned Single Judge has erred in directing the appellants herein to consider the application of the respondent-writ petitioner for transfer of licence in her favour.

(emphasis supplied)

13. Learned Counsel for petitioners requested that at least respondents may be directed to consider the case of petitioners. When Clause 5(12) of 2008 Control Order specifically prohibits transfer of hawker licence to legal heirs, no such direction can be issued. The petitioners have failed to demonstrate any statutory right that can be enforced in these proceedings for issue of writ of Mandamus.

14. The writ petitions are accordingly dismissed. No costs.