(2007) 10 AP CK 0064

In the Andhra Pradesh High Court

Case No : Writ Petition No. 21127 of 2007

J. Hari Kumar APPELLANT

Vs

District Collector and Others RESPONDENT

Date of Decision : 08-10-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21

Income Tax Act, 1961 — Section 220(6), 246, 254, 255

Citation : (2008) 1 ALD 468 : (2007) 6 ALT 775

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : K. Rathanga Pani Reddy, for the Appellant; G.P. for Civil Supplies for Respondent Nos. 1 and 2 and B. Sivakesava Reddy, for the Respondent

Final Decision : Allowed

Judgement

P.S. Narayana, J.—Heard Sri K. Ratangapani Reddy, learned Counsel representing the writ petitioner, the learned Assistant Government Pleader for Civil Supplies, representing on behalf of respondents 1 and 2 and Sri B. Sivakesava Reddy, learned Counsel representing the 3rd respondent.

2. The short question, which had been argued in elaboration by the counsel representing the respective parties, is in relation to whether an interim order can be made without giving reasonable opportunity to the opposite party, as specified by the proviso of Clause 21(2) of the A.P. State Public Distribution System Control Order, 2001 (hereinafter in short referred to ''Order'' for the purpose of convenience)

3. It is contended by Sri Ratangapani Reddy, on a careful reading of Clause 21 of the Order aforesaid since the wording being "no order shall be passed under this clause", it would apply both to interim order and also final order. Learned Counsel also had taken this Court through certain other factual details and further placed strong reliance on the decision of this Court in Alapati Soma Sekhar Vs. Collector and Others, .

4. Per contra, the learned Assistant Government Pleader for Civil Supplies, would contend that in the light of the Sub-clause (3) of Clause 21 of the Order aforesaid, the proviso of Clause 21 Sub-clause (2) would be applicable only in the case of final orders and not interim orders. Learned Assistant Government Pleader for Civil Supplies also would contend that if such interpretation is to be given, Sub-clause (3) of Clause 21 in a way would become ineffective. Hence, all the clauses may have to be harmoniously read in this regard.

5. Sri B. Siva Kumar Reddy, learned Counsel representing the 3rd respondent, placed strong reliance on the decision of the Apex Court in Income Tax Officer, Cannanore v. U.K. Mohamad Kunhi AIR 1969 SC 430 and would maintain that a tribunal would have power to grant stay which would be incidental or ancillary in exercise of its jurisdiction.

6. Heard the learned Counsel

7. The writ petition is filed for a writ of Mandamus declaring the impugned stay orders of the 1st respondent in Re. CS3/393/ 2007, dated 24-09-2007 in staying the petitioner''s appointment as Fair Price Shop dealer of Irladinne village of C-Belagal Mandal, Kurnool District, by the 2nd respondent vide proceedings in Re.B/216/2006, dated 06-08-2007 and confirmation orders passed in the appeal by the 2nd respondent Joint Collector, Kurnool in Re. DSO/CS3/359/2007 dated 11-09-2007, as arbitrary, illegal and in violation of principles of natural justice and vulative of Articles 14, 19 and 21 of the Constitution of India and consequently set aside the above said impugned orders of the 1st respondent and pass such other appropriate orders.

8. It is stated by the petitioner that he is a physically handicapped person, passed 10th Class and he was appointed as a Fair Price Shop Dealer of Irladinne village pursuant to the notification dated 11-07-2007 and interviews conducted on 25.07.2007 wherein himself, the 3rd respondent and five others appeared for interview, that in his appointment order dated 06-08-2007 the 2nd respondent clearly mentioned about the highest marks of 15 obtained by him and issued the appointment orders and that questioning his appointment orders on the untenable ground of past experience etc., the 3rd respondent filed appeal before the Joint Collector, Kurnool and after conducting detailed enquiry, the Joint Collector dismissed the appeal of the 3rd respondent vide proceedings in Rc.DSO/ C3/359/2007, dated 11-09-2007 clearly holding that when reservation is not mentioned it is deemed that it is under open category and no prejudice is caused to the 3rd respondent as his case also was considered and his past experience as a temporary dealer is of no help to him as he faced the allegations and resigned himself.

9. It is also stated that questioning his appointment orders issued by the 2nd respondent and confirmation orders passed in the appeal by the 2nd respondent Joint Collector, Kurnool, the 3rd respondent filed revision before the 1st respondent-Collector and to his shock and surprise the 1st respondent without

giving, notice and opportunity to him stayed the orders of the 2nd respondent and Joint Collector, vide impugned proceedings in Re. No. CS3/393/ 2007, dated 24.09.2007 which is a prima facie illegal and contrary to the provision 21(1) of APSPDS (Control) Order, 2001 which clearly envisages that without giving opportunity to other side no orders shall be passed.

10. It is further stated that the petitioner came to know about the impugned orders of the 1st respondent when the 3rd respondent was proclaiming in the village that he got stay and immediately he went to the Collector office and secured the impugned orders on 04-10-2007, that the order of the Joint Collector speaks for itself that his appointment by the 2nd respondent is valid and the 3rd respondent who participated in the selection and got lesser marks than him cannot have any grievance especially in the light of the serious irregularities committed by him when he was acting as temporary dealer and that he is continuing as Fair Price Shop Dealer from the date of appointment.

11. Clause 21 of the Order referred to above dealing with the revision reads as hereunder:

(i) Any person aggrieved by an order under Clause 20(1)(ii) 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)(ii) 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.

(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.

12. As already referred to supra, strong reliance was placed on the decision of the learned Single Judge of this Court in Allapati Soma Sekhar v. Collector, Krishna District at Machilipatnam and Ors. (1 supra). No doubt, certain submissions were made that the said decision was under A.P. Scheduled Commodities (Regulation of Distribution by Card System) Order, 1973 and further it was contended that even otherwise, on facts the said decision is distinguishable. It is also stated that the view expressed therein relating to locus standi of temporary dealer is no longer good law in the light of the subsequent views expressed by a Full Bench of this Court.

13. Be that as it may, the question to be decided is that in the light of the Sub-clause (iii) of Clause 21 read along with the proviso appended to Sub-clause (ii) of the said clause, whether the proviso would be applicable both in cases of interim orders as well as final orders. It is pertinent to note that the proviso specifies, 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. A distinction cannot be drawn between an interim order or a final order, in the light of the specific language of the proviso. Hence, it is to be interpreted that even while making orders under Clause 21 (iii) may be, the proviso of Sub-clause (ii) of Clause 21 may have to be observed, since it is specified that "no order shall be passed under this clause", which would assume some importance.

14. Learned Counsel representing the 3rd respondent placed strong reliance on the decision of the Apex Court in Income Tax Officer, Cannanore v. M.K. Mohamad Kunhi (2nd supra). It was a case which arose under Income Tax Act, 1961 and while dealing with Sections 254, 255 and 220(6) and 246 and its scope, ambit of the power of appellate tribunal to make interim orders, the Apex Court observed it has got power to grant stay as incidental or ancillary to its appellate jurisdiction and certain further observations were made relating to power of granting stay when to be exercised. This decision is not applicable to the facts of the present case, since on the interpretation of the proviso specified supra, this Court is of the opinion that in the case of either an interim order or a final order, the said proviso to be complied with, may be in cases of urgency, urgent notices are to be issued and appropriate orders are to be made.

15. In the light of the same, the impugned order of granting stay cannot be sustained and accordingly the same is hereby set aside. Let the 1st respondent dispose of the revision within a period of four weeks from the date of receipt of a copy of this order. It is needless to say that both parties to be put on notice and to be given reasonable opportunity before passing such orders.

16. The writ petition is, accordingly, allowed to the extent indicated above, at the stage of admission.

17. No order as to costs.