
(2012) 03 AP CK 0097

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3970 of 2012

J. Prameela

APPELLANT

Vs

District Collector, Adilabad District and others

RESPONDENT

Date of Decision : 13-03-2012

Acts Referred:

Citation : (2012) 5 ALT 669

Hon'ble Judges : Nooty Ramamohana Rao, J

Bench : Single Bench

Advocate : K.V. Raghuveer for Mr. P. Kasi Nageswara Rao, for the Appellant;

Final Decision : Allowed

Judgement

Nooty Ramamohana Rao, J.—This writ petition is instituted challenging the validity of the orders passed on 17.09.2010 by the Revenue Divisional Officer, Utnoor and orders dated 10.12.2010 of the Joint Collector, Adilabad and the orders dated 20.01.2012 of the District Collector, Adilabad. By his proceedings dated 17.09.2010, the Revenue Divisional Officer, Utnoor, declared the writ petitioner as not eligible for running a fair-price shop as her husband was found to be working as a teacher of a government school. The case of the writ petitioner is that, she is a member belonging to Scheduled Tribes and pursuant to regular selection carried out, she was appointed as a fair-price shop dealer of Utnoor Village and Mandal of Adilabad District by the Revenue Divisional Officer, Utnoor on 05.08.2005 and ever since then, she has been distributing the various essential commodities and civil supplies through the fair-price shop without giving any scope for complaints against her. While so, the Revenue Divisional Officer has entertained a representation of some of the villagers on 12.05.2010 during the Prajapadham programme held at the Gram Panchayat where it is alleged that, the writ petitioner being the wife of a Government Employee, is not eligible to run a fair-price shop.

2. The Tahsildar, Utnoor, was asked to conduct an enquiry and submit his report

and accordingly, a report was submitted by the Tahsildar on 02.06.2010 stating that the husband of the writ petitioner is working as a Teacher in the Zilla Parishad High School at Utnoor and in view of the said finding, a show-cause notice was issued on 29.07.2010 as to why the petitioner could not be declared as ineligible to be appointed as a fair-price shop dealer and after considering the explanation of the writ petitioner, the Revenue Divisional Officer passed orders on 17.09.2010 declaring the petitioner as ineligible and the authorization issued earlier in her favour for managing the fair-price shop has been cancelled. Against these orders of the Revenue Divisional Officer, the writ petitioner carried the matter in appeal before the joint Collector. The Joint Collector / Collector (Civil Supplies), Adilabad, through his orders dated 10.12.2010 rejected the appeal as the husband of the writ petitioner was a Government Employee and he was appointed as such even prior to the appointment of the writ petitioner as a fair-price dealer. The petitioner carried the matter by way of revision to the District Collector, Adilabad who, by his proceedings dated 20.01.2012, while dismissing the revision, affirmed the orders passed by the Joint Collector as well as the Revenue Divisional Officer.

3. Heard Sri K.V. Raghuveer, learned counsel for the writ petitioner and the learned Government Pleader for Civil Supplies.

4. The undisputed fact situation is that, the Revenue Divisional Officer issued a notification on 16.07.2005 proposing to appoint a fair-price shop dealer at Utnoor. Interviews were conducted on 05.08.2005 at 11.00 a.m. of them, the writ petitioner has been picked up for appointment as a dealer and she was continuing thereafter as a dealer of the fair-price shop at Utnoor and was found distributing faithfully the essential commodities. The Revenue Divisional Officer has placed reliance upon the guidelines issued by the State Government through their G.O.Ms.No. 52 Consumer Affairs, Food and Civil Supplies (CS-1) Department dated 18.12.2008 and had come to the conclusion that the writ petitioner is not eligible to be appointed as a fair-price shop dealer on the ground that her husband was a government employee. It is hardly in doubt that, the guidelines furnished by the State Government through their G.O.Ms.No. 52 dated 18.12.2008 will only have prospective effect and consequently the question as to whether the writ petitioner was eligible to (sic) appointed as a fair-price shop dealer as on 05.08.2005 has got to be tested with reference to the terms and conditions or instructions of the State Government available as at that time. The Joint Collector also in his orders dated 10.12.2010 has placed reliance upon the same instructions of the government which were issued subsequent to the date of appointment of the writ petitioner. The District Collector has examined the entire matter in the backdrop of the instructions issued subsequently by the State Government contained in G.O.Ms.No. 4 Consumer Affairs, Food and Civil Supplies (CS-1) Department dated 19.02.2011. The orders passed by the Revenue Divisional Officer, Joint Collector and the District Collector, which took into account and consideration the guidelines furnished by the State Government subsequent to 05.08.2005 are clearly vitiated. Guidelines furnished subsequently

by the State Government, which are purely administrative in nature and content, cannot determine the validity of an order of appointment issued as on 05.08.2005.

5. But however, realizing this manifest error, the learned Government Pleader for Civil Supplies has drawn my attention to the set of guidelines issued by the State government through their G.O.Ms.No. 53 Consumer Affairs, Food and Civil Supplies (CS-1) Department dated 06.10.2003 concerning the method and manner of appointment of dealers for various fair-price shops. In paragraph 12(3), it is noted there as under:

Close relatives of Government employees specially those working in Civil Supplies Department or Revenue Department or the Civil Supplies Corporation or Village Administrative Officer of the village shall not be appointed as F.P. Shop Dealers.

Hence, it is contended that the writ petitioner is not eligible to be appointed as a fair-price shop dealer.

6. It is true that the State Government has proposed to encourage the unemployed and otherwise eligible young persons to be appointed as fair-price shop dealers. Such a measure obviously intended to ensure that the unemployed young people would be able to make a living out of such a calling. The State wanted to ensure that, proper care and attention would be paid by such unemployed young people in the matter of distribution of essential commodities to various ration cardholders and thus, secure the commission or margin money that is normally provided in the process. That would be their earning. The State Government has also wanted to render social justice and planned integration of the society by protecting the interests of the vulnerable groups such as scheduled castes, scheduled tribes, backward classes, physically challenged category persons, etcetera, by setting apart certain percentage of dealerships to be filled in by persons belonging to such categories. The State Government has also therefore intended to see to it that, close relatives of government employees should not be appointed as fair-price shop dealers. This policy measure has been adopted to ensure that the government servants, by virtue of their status and influence will not get their close relatives appointed as fair-price shop dealers and further to ensure that the dealers will not resort to improper or irregular methods in the matter of distribution of essential commodities under a false sense of belief that their close relatives will anyway come to their rescue in case of necessity.

7. But, at the same time, the State Government does not seem to have taken a decision to completely debar close relatives of government servants from being appointed as fair-price shop dealers. If, really the State Government intended to prevent close relatives of government servants to be appointed as fair-price shop dealers, there was no necessity for the Government to couch the instructions in the manner in which it has, as noticed supra. A simple and straightforward

sentence such as "close relatives of government employees cannot be appointed as fair-price shop dealers" would have conveyed the notion clearly. But, instead, the State Government preferred to qualify their statement by using "specially those working in Civil Supplies Department, Revenue Department or the Civil Supplies Corporation or the Village Administrative Officer of the Village", shall not be appointed as a fair-price shop dealer. This later part of the clause in fact, holds the key for understanding the contours of the policy which the Government contemplated for not appointing close relatives of the government employees. It is discernible clearly that, the Government wanted to ensure that, close relatives of those who are working in Civil Supplies Department, Revenue Department and the Civil Supplies Corporation or the Village Administrative Officer of the Village concerned shall not be appointed. Perhaps, the close relatives of government employees, other than the above referred categories, are not intended to be prevented from being appointed.

8. Obviously, those who are working in the Civil Supplies Corporation are not government servants. Andhra Pradesh Civil Supplies Corporation is a public sector undertaking floated by the State for purpose of undertaking commercial activities relating to essential commodities. It answers the description of State but, employment in the said Andhra Pradesh Civil Supplies Corporation is not the same as employment with the Government. Therefore, by preventing close relatives of those employed with the Andhra Pradesh Civil Supplies Corporation, the State Government had made its intentions manifestly clear setting out that, those who have something to do or the other and connected one way or the other with the distribution of civil supplies by the State shall be prevented from being appointed as a dealer of a fair-price shop. Further, when the State Government wanted to prevent the Village Administrative Officer from being appointed, it has taken care to specify that, the close relatives of the Village Administrative Officer of the Village concerned shall not be appointed. Thus, the State Government made its position clear by setting out that only those, who might wield considerable influence in matters relating to distribution of essential commodities should be prevented from getting appointed as dealers of fair-price shops. To put it differently, the relatives of not all the government servants are prevented from being appointed as fair-price shop dealers. It is quite possible that, one close relative or the other of certain individuals may have been appointed in various other departments of the State Government like the fire brigade, forest department, etcetera, and it would not have been possibly the intention of the State Government to prevent close relatives of such employees from being appointed as fair-price shop dealers. Above all, the State is seeking to provide as many avenues of employment opportunities as possible and hence, it would only be preventing least numbers of people from getting appointed as fair-price shop dealers, instead of spreading its canvass across a huge area.

9. In the instant case, the husband of the writ petitioner was said to be employed as a teacher with the local Zilla Parishad High School. Therefore, as a teacher of a local High School, the husband of the writ petitioner would have had

very little opportunity to have any interface with the departments such as Revenue, Civil Supplies, for him to wield any amount of influence. May be, behind the decision of the Government in not appointing close relatives of Government Employees, the Government may be contemplating the possible dislocation to the distribution of essential commodities that might occur due to the transfer of government employees from one place to another at regular periodicity. If a dependant, close relative of a government employee is appointed as a fair-price shop dealer of a particular area/locality and if his principal / her principal were to be transferred by the government from place to place, requiring him/her to move along with such a government employee, there can occasion dislocation to the distribution of essential commodities. But however, I feel that such a prospect is far more remote than being direct. After getting appointed as a fair-price shop dealer, each individual was required to live in the same village or area where the fair-price shop is located and carry on the business of distribution of essential commodities to the cardholders and earn for his own living and thus sustain on his own. The situation, to my mind, is the same where more than one member in a family gets employed. In cases of necessity, each seeks to sustain on his own.

10. Therefore, the fact that, the writ petitioner's husband is employed as a teacher with the Zilla Parishad High School cannot be treated as an absolute bar for her selection or bar for her appointment as a fair-price shop dealer. By using the expression "Specially" in Clause 12(3) of the guidelines, the bar contemplated is not an absolute one but is only a preferable one. As the writ petitioner was selected at the regular selections, it is obvious that, she has been picked up as she is the most meritorious and deserving. Assuming that, she is the only one candidate who had applied for dealership, even then, her appointment as a fair-price shop dealer made on 05.08.2005 should not have been interdicted at all subsequently thereto. Above all, the writ petitioner claimed to be a member belonging to schedule tribe. The State Government on a top priority basis is endeavoring its very best to improve upon the lot of scheduled tribes. It, therefore, stands to reason that the appointment of the writ petitioner as a fair-price shop dealer at Utnoor should not be interdicted. I, therefore, have no hesitation to allow this writ petition and set-aside the orders passed by the Revenue Divisional Officer on 17.09.2010, the Joint Collector / Collector (Civil Supplies) on 10.12.2010 and the District Collector on 20.01.2012 and direct the respondents to treat and continue the writ petitioner as a fair-price shop dealer for Utnoor Village, permitting her to lift and distribute the essential commodities so long as the writ petitioner does not indulge in any irregularities warranting cancellation or suspicion of her authorization. No costs.