
(2014) 06 AP CK 0162
In the Andhra Pradesh High Court
Case No : Writ Petition No. 6463 of 2012

Kota Nagamani

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 19-06-2014

Acts Referred:

Citation : (2014) 4 ALD 599 : (2014) 6 ALT 562

Hon'ble Judges : A. Rajasekhar Reddy, J

Bench : Single Bench

Advocate : Taddi Nageswara Rao, Advocate for the Appellant; Gorle Gopalakrishna, Advocate for the Respondent

Final Decision : Dismissed

Judgement

A. Rajasheker Reddy, J.—This writ petition is filed for declaring the action of the 1st respondent in issuing G.O.Ms. No. 4 Consumer Affairs, Food and Civil Supplies (CS. I) Department, dated 19-02-2011 for selection of Fair Price Shop Dealer as illegal and arbitrary and for a consequential direction to set aside the same.

2. The case of the petitioner is that the 4th respondent has issued a notification in Rc. No. 179/12 C, dated 09-02-2012 for appointment of Fair Price Shop Dealer for Shop No. 15 of Salur Town, Vizianagaram District in which 50 marks for written test and 50 marks for oral interview are prescribed and the said notification was issued in accordance with the guidelines prescribed under G.O.Ms. No. 4 Consumer Affairs Food and Civil Supplies (CS. I) Department, dated 19-02-2011. In pursuance of the said notification, the petitioner applied for the same on 09-02-2012, attended the written test conducted on 26-02-2012 and secured 50 marks out of 50 and also attended oral interview on 27-02-2012. It is stated that at the instance of local political leaders, the 4th respondent selected the 6th respondent as Fair Price Shop Dealer of Shop No. 15, even though the 6th respondent is ineligible and disqualified to be appointed. Aggrieved by the said action, the present writ petition is filed.

3. This Court granted interim order on 12-03-2012 and later it was vacated and when restoration petition is filed, this court granted status quo on 12-02-2014.

4. Respondents 1 to 3 filed their counter contending that the writ petition is not maintainable on the ground of law of estoppel, as the petitioner participated in the selection process basing on the notification issued on 09-02-2012 and having participated in the process, the petitioner cannot challenge G.O.Ms. No. 4, Consumer Affairs, Food and Civil Supplies (CS. I) Department, dated 19-02-2011. It is stated that allocation of reservation has been maintained by following the rule of reservation as envisaged in G.O.Ms. No. 4, dated 19-02-2011. It is also stated that the petitioner has secured 50 marks in the written test and got 25 marks only in the oral interview, whereas the 6th respondent secured 46 marks in the written test and got 35 marks in the oral interview and hence, since the 6th respondent secured highest marks than the petitioner, the 6th respondent was appointed as fair price shop dealer. It is also stated that interview also plays a vital role with regard to assessing suitability of the candidate and personal representation of the candidate applied for and he/she will be asked question on the functioning of the fair price shop and other general issues relating to Public Distribution System. It is further stated that the judgment of the Apex Court relied on by the petitioner has no application to the appointment of fair price shop dealer as fair price shop dealers are not Government employees or that a permanent appointment is not made to them and that they are agents of the Governments, who has to supply the essential commodities to the card holders as per the directions and instructions issued to them from time to time. It is further stated that the residence of the 6th respondent has also been verified with regard to the ration card etc., and it was found that she is residing in Ward No. 27 in which the fair price shop is existing and that the 6th respondent has given an undertaking that she would quit the post of Anganwadi worker, if she is selected for the post of F.P. shop dealer and sought for vacating the interim order.

5. The 6th respondent also filed her counter reiterating the contentions of the respondents 1 to 3. It is stated that she got 81 marks both in the written examination and viva voce and stood first as such, she has been selected for appointment of fair price shop dealer, whereas the petitioner got 75 marks both in written test as well as in viva voce. The 6th respondent also denied that there is any political influence. It is also stated that due to her marital relationship her surname was changed and that she is having ration card in the area where Shop No. 15 is situated. It is further stated that the petitioner, having filed appeal against the action of the 4th respondent before the 3rd respondent, which is pending, has no right to file the writ petition, which is not maintainable.

6. Learned counsel for the petitioner submits that allocation of 50 marks for the interview is arbitrary and illegal. In support of his contention, he relied on judgments reported in *Nishi Maghu v. State of Jammu and Kashmir*, *Ajay Hasia and others v. Khalid Mujib Sehravardi and others*, *P. Mohanan Pillai v. State of*

Kerala and others, Director General, Indian Council for Agricultural Research and others. He further contends that this Court has struck down the criteria of allocation of 50% marks for the interview and the notification as well as G.O.Ms. No. 41, dated 09-02-2012 in W.P. No. 7022 of 2013 and batch, dated 04-04-2013. He further contends that this Court held that fixation of 50 marks for interview is bad and therefore directed the Government to fix 20 marks at best for interview, while apportioning 80 marks for the written test. Without following the same, the 6th respondent was selected in this case. He also relied on judgment reported in Vikram Simha Reddy v. Government of Andhra Pradesh and others.

7. Learned counsel for the 6th respondent as well as learned Assistant Government Pleader for Civil Supplies stated that the petitioner participated in the selection process without challenging the notification in which 50% marks were earmarked for interview and the petitioner cannot challenge the notification after selection process is over. In support of his contentions, the learned counsel for the 6th respondent relied on judgments reported in K.H. Siraj v. High Court of Kerala and others, Ashok Kumar Yadav and others v. State of Haryana and others, Union of India and another v. N. Chandrasekharan and others, Ramesh Chandra Shah and others v. Anil Joshi and others, Om Prakash Shukla v. Akhilesh Kumar Shukla and others and Madan Lal and others v. State of J & K and others.

8. In the instant case, the petitioner admittedly participated in the selection process for appointment of Fair Price Shop Dealer issued through the impugned notification vide Rc. No. 179/12 C, dated 09-02-2012 both in the written test as well as oral interview. Since she was not selected as fair price shop dealer, the petitioner filed the present writ petition. Though the petitioner challenged G.O.Ms. No. 4 Consumer Affairs, Food and Civil Supplies (CS. I) Department, dated 19-02-2011, which prescribed procedure for appointment of Fair Price Shop Dealers, the petitioner has not challenged the notification in Rc. No. 179/12 C, dated 09-02-2012 in which 50% marks were earmarked for interview. As on the date of oral test and interview, the impugned G.O.Ms. No. 4, dated 19-02-2011 holds the field prescribing the procedure for appointment of Fair Price Shop Dealers. Having participated in the selection process, without any protest, it is not open for the petitioners to challenge the same and the petitioner is estopped from challenging the said procedure as laid down by the Apex Court in Om Prakash Shukla v. Akhilesh Kumar Shukla and others (10 supra) and in Madan Lal and others v. State of J & K and others (11 supra) wherein it is held as follows:

The petitioners also appeared at the oral interview conducted by the concerned Members of the Commission who interviewed the petitioners as well as the concerned contesting respondents. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, that they have filed this

petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted. In the case of Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others, , it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.

In Ramesh Chandra Shah and others v. Anil Joshi and others (9 supra), it is held as follows:

In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents.

In Union of India and another v. N. Chandrasekharan and others (8 supra), the Apex Court held as follows:

We have considered the rival submissions in the light of the facts presented before us. It is not in dispute that all the candidates were made aware of the procedure for promotion before they sat for the written test and before they appeared before the Departmental Promotion Committee. Therefore, they cannot turn around and contend later when they found they were not selected by challenging that procedure and contending that the marks prescribed for interview and confidential reports are disproportionately high and the authorities cannot fix a minimum to be secured either at interview or in the assessment on confidential report.

In K.H. Siraj v. High Court of Kerala and others (6 supra), the Apex Court held as follows:

It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others, , it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protect and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.

9. Though the learned counsel for the petitioner placed reliance on various precedents stating that allocation of 50 marks for interview as against 100 marks is bad in law, the same does not come to the rescue of the petitioner since he has knowingly participated in the selection process.

10. In view of above facts and circumstances of the case and the law laid down by the Apex Court in the decisions referred to supra, the writ petition is devoid of merit and thus, the same is liable to be dismissed.

11. Accordingly, the writ petition is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions if any pending shall stand closed.