
(1997) 01 AP CK 0038

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 356 and 673 of 1996

M. Shashikala

APPELLANT

Vs

The Collector, Civil Supplies and Another

RESPONDENT

Date of Decision : 28-01-1997

Acts Referred:

Constitution of India, 1950 — Article 19(1), 226
Essential Commodities Act, 1955 — Section 6A, 7

Citation : (1997) 1 ALD(Cri) 918 : (1997) 2 ALT 574

Hon'ble Judges : P.S. Mishra, C.J;M.H.S. Ansari, J

Bench : Division Bench

Advocate : P. Anil Kumar Reddy, for the Appellant; Govt. Pleader, for the Respondent

Judgement

M.H.S. Ansari, J.—A learned single Judge of this Court (B. Sudershan Reddy, J.) has referred these matters for a decision by this Bench on the facts and for the reasons which are stated in his Order, which reads as under:

In these two writ petitions a common question arises for consideration and as such, they are being disposed of by a common order. It would be enough to refer to the facts in W.P. No. 356 of 1996 for disposal of these matters.

2. The petitioner prays for an appropriate writ, order or direction particularly one in the nature of a writ of mandamus declaring the endorsement dated 2-1-1996 as illegal. The petitioner also seeks a further direction to the respondents herein to release the supplies of essential commodities to the fair price shop run by the petitioner so as to enable the petitioner to distribute the same to the card holders in the said shop.

3. The petitioner is an authorised, fair price shop dealer of Rajunagar Thanda and there are five thandas within the area of operation of the said shop. The Inspector of Police, Vigilance Cell, Civil Supplies Department, Mahabobbnagar conducted a search of the petitioner's fair price shop on 02-1-1995 at 4 p.m. on

credible information that the petitioner was not distributing the essential commodities to the card holders properly and was diverting the essential commodities to the open market for sale to make illegal gain. In the process of search, two quintals of sugar loaded in four bags of 50 kgs., each was seized and a panchanama was conducted alleging that the petitioner had contravened Clause (3) of the Andhra Pradesh Scheduled Commodities Dealers (Licensing & Distribution) Order, 1982 and Clauses 3 and 4 and conditions of the authorisation issued under Andhra Pradesh Scheduled Commodities (Regulation of Distribution by Card System) Order, 1973 read with Section 7 of the Essential Commodities Act, 1955. During the course of such search and seizure, the panchanama discloses, that 9 cardholders were alleged to have been examined and the said card holders are alleged to have stated that the petitioner was not distributing the essential commodities especially sugar to the cardholders. However, the said card holders are alleged to have stated that the petitioner was selling rice at Rs. 3/- per Kg. instead of selling at Rs. 2/- per Kg. and sugar at Rs. 9-50 ps. per Kg. and kerosene at Rs. 3-50 ps. per litre. The seized stock of sugar was handed over to another fair price shop dealer at Arikilla village. It is also stated in the affidavit that the petitioner herein was not present at the time of the search and seizure by the Vigilance Inspector. Thereafter, it is stated that the petitioner apprehending arrest moved this Court in CrI. P. No .6250 of 1995 for Anticipatory bail and the same was granted by this Court on 27-12-1995. Thereafter, the petitioner approached the 2nd respondent-Mandal Revenue Officer, (sic) on 1-1-1996 seeking supply of the essential commodities by application dated 1-1-1996 received in the office of the 2nd respondent on 2-1-1996 and the 2nd respondent by his proceedings dated 2-1-1996 has made an endorsement returning the application that in view of the proceedings initiated u/s 6A of the Essential Commodities Act, the 1st respondent-District Collector had instructed that the essential commodities should not be supplied to such of those dealers against whom proceedings u/s 6-A of the Essential Commodities Act, 1955 are initiated.

4. I have directed the learned Government Pleader by order dated 22-1-1996 to get instructions in the matter as to whether the petitioner's authorisation is kept under suspension pending enquiry or cancelled or whether any appropriate proceedings are initiated against the petitioner under the provisions of the A.P. Scheduled Commodities (Regulation of Distribution by Card System) Order, 1973. The learned Government Pleader could not get any information whatsoever in this regard. Therefore, the matter is taken up for consideration.

5. I have heard the learned Counsel for the petitioner Shri P. Anil Kumar Reddy and learned Government Pleader in detail.

6. Learned Counsel for the petitioner submits that the respondents are bound to supply the essential commodities to the petitioner's fair price shop as long as the authorisation is in force and it is further urged that the respondents cannot withhold the supply of stocks merely on account of pendency of proceedings initiated against the petitioner u/s 6-A of the Essential Commodities Act. The

learned Counsel further states that the refusal to supply essential commodities, in effect, would amount to suspending or cancelling the license without any order as such and placed reliance upon the decisions of this Court in *B. Satyanarayana Vs. The Joint Collector (C.S.) and Others*, *Gundala Rama Murthy Vs. The District Collector and Others*, *P. Hanumantha Rao Vs. The Chief Rationing Officer and Another*, and *Md. Saleem v. Revenue Divisional Officer*, 1994 (1) APLJ 427. All these decisions are rendered by my learned brother Hon'ble Sri Justice P. Venkatrama Reddi. The learned Counsel also relied upon another decision of this Court in *P. Lakshminarasiah Vs. The Joint Collector and Another*, rendered by my learned brother Hon'ble Sri Justice Syed Shah Mohammed Quadri. In the said decisions, this Court took the view that "the proceedings u/s 6-A are quite distinct from the proceedings under the Control Order and the mere fact that action was initiated u/s 6-A of the Act does not automatically result in suspension or cancellation of the authorisation of the Fair Price Shop". This Court further took the view that "competent authority exercising power under the A.P. Scheduled Commodities (Distribution by Card System) Order or any other Control Order has to independently apply its mind to the charges against the dealer and take its own decision instead of being led away by the initiation of the proceedings u/s 6-A of the Essential Commodities Act". It was also held that "it is open to the competent authority, while deciding upon the action to be taken under the Control Order to take into account the relevant material that would have come to light from Section 6-A proceedings, and whether or not the authorisation is to be cancelled is a matter of independent decision to be taken by the competent authority exercising power under the Control Order. In all the cases rendered by my learned brother P. Venkatrama Reddi, J., the authorisation of the fair price shop dealer was either kept under suspension or cancelled merely on the ground that the proceedings u/s 6-A of the Act were pending against the authorised fair price shop dealers. Similar view was taken by my learned brother Syed Shah Mohammed Quadri, J. (5th supra). In the instant case, the authorisation of the petitioner is neither kept under suspension pending enquiry nor cancelled by any of the competent authority but the respondents have refused to supply the essential commodities to the petitioner's fair price shop. The questions that fall for consideration in these two writ petitions are whether the discretionary writ of mandamus should be issued and relief granted in favour of authorised fair price shop dealers against whom serious allegations of black-marketing and other serious irregularities are made and proceedings pending u/s 6-A of the Essential Commodities Act and as to whether statutory authorities should be compelled to supply essential commodities to such dealers?

7. Reference has also been made by the learned single Judge to a judgment of a Division Bench of this Court in *B. Maheswaramma Vs. Smt. M. Ramasubbamma and Others*, (wherein one of us, the Chief Justice speaking for the Bench) held as under:

"A person who has been subjected to disciplinary action for a wrong doing should not be allowed to function under the interim order of the Court. In all such cases

it is not the interest of the party alone but the public interest which is of utmost importance. A person who is a dealer of a fair price shop dealer in essential commodities, is one whose conduct affects a large body of the consumers."

8. The learned single Judge has finally observed as under:

"Large number of writ petitions similar to that of the cases on hand, are repeatedly coming up before the Court and the issue being of considerable importance requires to be resolved by an authoritative pronouncement and the aspects referred to herein above may be required to be considered by a Division Bench."

9. It is in the above circumstances that the matters are listed before and heard by us.

10. It is apparent from the facts stated supra that proceedings have been initiated against the petitioners u/s 6-A of the Essential Commodities Act.

11. There can be no doubt that the Essential Commodities Act, 1955 (for short "E.C. Act") has been enacted with the object to provide, in the interest of the general public, for the control, production, supply and distribution of Trade and Commerce in certain Essential Commodities. We are not concerned here in these proceedings whether the proceedings initiated against the petitioners u/s 6-A of the Act are legal or not. That is a matter to be canvassed by the petitioners before the appropriate authority before whom the proceedings u/s 6-A are pending for the establishment of their rights as to the legality or the propriety of the action initiated against the petitioners and for an appropriate relief in this behalf, the petitioners must, in our opinion, establish the necessary facts in proceedings u/s 6-A of the Act. We are, however, concerned in these proceedings whether during the pendency of the said proceedings u/s 6-A, the petitioners can seek the aid of this Court for release of supplies of essential commodities to the fair price shops being run by the petitioners so as to enable the petitioners to distribute the same to the Card holders. It is not in dispute that the petitioners are also holding authorisations to function as fair price shop dealers and are governed by the provisions of Andhra Pradesh Scheduled Commodities (Regulation or Distribution by Card System) Order, 1973 (for short "Control Orders"). It is also to be noted that the said authorisation has neither been suspended nor cancelled. Power to do so is, however, traceable to sub-clause (4) of Clause 3 of the Control Orders enabling the Appointing Authority (Revenue Divisional Officer) to suspend or cancel the authorisation for any violations suo motu after making such enquiry as may be deemed necessary. Several Judgments of learned Single Judges of this Court, reference to which has been made supra, have consistently held that the nature of proceedings u/s 6-A of the Essential Commodities Act and proceedings for cancellation or suspension of the authorisation under Clause 3(4) of the Control Orders are different and distinct. The authorities under the Essential Commodities Act and the Control Orders for initiating the proceedings are also different and distinct. The aforesaid judgments

(referred to supra) have also recognised and declared that the concerned statutory authorities on whom the power is conferred have to act independently and objectively. In so far as the Appointing Authority under Clause 3(4) of the Control Order is concerned, it has been categorically held that he has to take an independent decision in the matter instead of mechanically following the orders that may be passed u/s 6-A of the Essential Commodities Act or where no orders u/s 6-A have been passed and proceedings are pending. The Appointing Authority under the Control Order cannot pass interim orders of suspension of authorisation on the ground of mere pendency of enquiry u/s 6-A of the Essential Commodities Act. It has also been held that there is no such provision in the Control Orders. We agree to that extent with the judgments of learned single Judge P. Venkatrama Reddi, J. and Syed Shah Mohammed Quadri, J. in the cases referred to supra.

12. The real question at issue, however, is whether such persons who are dealers in food-grains either under the Essential Commodities Act or under the aforesaid Control Orders and who have been subjected to disciplinary action for a wrong doing should be allowed to function under any orders of the Court. It is trite law to say that the Fundamental Right to carry on trade or business guaranteed under Article 19(1)(g) of the Constitution has its own limitations. The liberty of an individual to do as he pleases is not absolute. It must yield to the common good. Absolute or unrestricted individual rights do not and cannot exist in any modern state. There is no protection of the rights themselves unless there is a measure of control and regulation of the rights of each individual in the interests of all. Whenever such a conflict comes before the Court, it is its duty to harmonise the exercise of the competing rights. The Court must balance the individual's rights of freedom of trade under Article 19(1)(g) as against public interest.

13. The nature of right alleged to have been infringed in the instant case is that the petitioners who are dealers under the Essential Commodities Act and are also authorised fair price shop dealers under the Control Orders are prevented from carrying on their business as fair price shop dealers by non-supply of Essential Commodities solely on the ground that proceedings have been initiated for alleged violations committed under Essential Commodities Act and proceedings in respect thereof are pending u/s 6-A of the said Act.

14. Though, no doubt, the authorities u/s 6-A of the Essential Commodities Act and under Clause 3(4) of the control Orders are distinct and different and each of the said authorities have to independently take proceedings in respect of alleged violations in accordance with law. It also cannot be disputed that till such time as the authorisation of the petitioners as fair price shop dealers is subsisting, they are entitled to run the business as fair price shop dealers. But, merely, because the authority under the Control Orders has failed to act notwithstanding the power vested in it under Clause 4(3) of the Control Orders, can this Court in exercise of its power under Article 226 of the Constitution of India issue a writ or

a direction in the nature of a Mandamus compelling the authorities to supply the essential commodities to the petitioners for distribution to the card holders. In the judgments referred to supra learned Single Judges had no doubt issued such directions. To that extent, we differ with the aforesaid judgments with respect to the nature of directions issued therein.

15. As already noticed, power is vested in the Appointing Authority under the Control Orders to inter alia suspend or cancel the authorisation of fair price shop dealers for any breach or violation of the conditions of their license and provisions of the Control Orders. In the judgments of the learned single judges cited supra, it has been observed and rightly so in our opinion, that it would be open to the competent authority under the Control Order while deciding upon the action to be taken under the Control Orders to take into account the relevant material that would have come to light from Section 6-A proceedings and whether or not the authorisation is to be cancelled is a matter of independent decision to be taken by the competent authority exercising the power under the Control Order. The High Courts in exercising their jurisdiction under Article 226 of the Constitution have the power to issue a Writ of Mandamus or a Writ in the nature of Mandamus and give necessary directions where the Government or a Public Authority has failed to exercise or already exercised the discretion conferred upon it by a Statute or a Rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance, in a proper and lawful manner, of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion. In one of its earlier decision in *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, the Supreme Court pointed out that Article 226 is designedly couched in a wide language in order not to confine the power conferred by it only to the power to issue prerogative writs as understood in England, such wide language being used to enable the High Courts to reach injustice wherever it is found and to mould the reliefs to meet the peculiar and complicated requirements of this country.

16. There has been inaction on the part of the Appointing Authority under the Control Orders to initiate appropriate proceedings, which inaction can rightly be termed as one of failure to exercise discretion vested in such authority. The reasons whatever the same may be are not, however, known. But the fact remains that the supplies of essential commodities are not being made to the petitioners in view of the proceedings pending against them for the alleged

violations u/s 6-A. For the inaction of such public authorities, can the jurisdiction of this Court be invoked under Article 226 for issue of positive directions as prayed for. To our mind, the said query has to be answered in the negative. This Court, in exercise of its jurisdiction under Article 226 of the Constitution of India acts as a Court of equity and while exercising such jurisdiction it so acts to prevent perpetration of a legal fraud and obliged to do justice by promotion of good faith. It can also mould the relief (sic) compel the authorities to perform the duty in accordance with law.

17. Accordingly, in matters of this nature where the fair price shop dealers who are subjected to proceedings u/s 6-A of the Essential Commodities Act cannot for their wrong doing seek the aid or assistance of this Court under Article 226 of the Constitution of India to compel the authorities to supply essential commodities to them for distribution and allow them to function as fair price shop dealers. The proper order, to our mind, would be to direct the Appointing Authority to pass appropriate orders in accordance with law on the basis of material that may have come to light in the proceedings initiated u/s 6-A of the Essential Commodities Act. Such a decision would have to be taken by the Competent Authority/ Authorised Officer within a reasonable time from the date of receipt of information about the initiation of proceedings against the dealer u/s 6-A of the Essential Commodities Act.

18. That the above, would be the appropriate directions, that need to be issued by the Courts in exercising their jurisdiction under Article 226 of the Constitution in such matters. Reference is answered accordingly.

19. Let directions accordingly issue to the Respondents in the terms, as above.

20. The writ petitions are accordingly disposed of with the directions as above.