
(2003) 03 AP CK 0130

In the Andhra Pradesh High Court

Case No : Writ Petition No. 11195 of 1997

Meherunnisa Begum

APPELLANT

Vs

Mandal Revenue Officer and Another

RESPONDENT

Date of Decision : 18-03-2003

Acts Referred:

Citation : (2003) 3 ALD 731

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

Bench : Single Bench

Advocate : Jayanthi, for the Appellant; Government Pleader for Civil Supplies, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The petitioner seeks a writ of mandamus declaring that she is entitled for transfer of hawker's licence in her name or in the name of her eldest son being legal heirs of her deceased husband as per Government Memo No. 47228/CS,II/89-1, Food and Agriculture (CS) Department, dated 8.8.1989, and to set aside the order dated 20.5.1997 issued by the second respondent herein whereby and whereunder her request for transfer of the licence was rejected.

2. The fact of the matter is not in dispute. The petitioner's husband Mohammed Shariff was granted kerosene hawker's licence under Andhra Pradesh Petroleum Products (Licensing and Regulation of Supplies) Order, 1980 (for short, the Order). On 12.5.1997 he died. Therefore, placing reliance on Government Memo dated 8.8.1989 she filed an application on 17.5.1997 before the second respondent seeking transfer of hawker's licence in her name or in her son's name. The second respondent after referring to judgment of this Court in Writ Petition No. 8201 of 1994, dated 29.2.1996 rejected petitioner's request as under:

The request made by Smt. Meharunnisa Begum, W/o. (Late) Mohammed Shareef, deceased, Kerosene Hawker of Machilipantam, to transfer the kerosene

licence in favour of her eldest son is hereby negated, as the licence issued in favour of her deceased husband cannot accrue to his legal heir.

3. Learned Counsel for the petitioner, Ms. Jayanti, relies on the Government Memo dated 8.8.1989 in support of the contention that such transfer is permissible.

4. The Government Memo dated 8.8.1989 reads as under:

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 that 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.

5. 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. 8201/94 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.

AH 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.

6. 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.

7. In view of the subsequent Memo dated 15.6.1998 as well as Division Bench judgments of this Court in Writ Appeal No. 1244 of 1999, dated 31.8.1999 and Writ Appeal No. 1230 of 2002, dated 31.10.2002, the petitioner cannot be said to have enforceable right warranting interference in this petition under Article 226 of the Constitution.

8. The writ petition therefore fails and is accordingly dismissed. No costs.