
(2010) 03 AP CK 0062

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 1715 and 27032 of 2009

N. Nagamani and Another

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 11-03-2010

Acts Referred:

Constitution of India, 1950 — Article 19(1)

Citation : (2010) 3 ALD 733 : (2010) 3 ALT 532

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

Bench : Single Bench

Advocate : D. Pramada, for the Appellant; G.P. for Civil Supplies for Respondent Nos. 1 to 4, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—This common order shall dispose of both the writ petitions. W.P. No. 1715 of 2009 is filed by Smt N. Nagamani (hereafter called, first petitioner) and Sri A. Narsimhulu (hereafter called, second petitioner) challenging the notification issued by Revenue Divisional Officer (RDO), Siddipet inviting applications for appointment of dealers for fair price shops (FPS) of Bayyaram FPS-II and Kolgoor FPS-II. It is the case of petitioners that they have been appointed as FPS dealers - Bayyaram and Kolgoor respectively and that their shops were bifurcated without notice to them and in violation of norms prescribed by Government in G.O.Ms. No.35 dated 17.09.2007. The second petitioner filed W.P. No. 27032 of 2009 aggrieved by the inaction on the part of RDO in not renewing the authorization in respect of FPS, Kolgoor. He seeks a direction to RDO to renew licence.

2. The RDO filed counter affidavits separately in both the writ petitions, but the averments are almost similar. The case projected in the counter is as follows. As per the instructions of Government, exchange of old cards as well as issue of new cards through IRIS system resulting in increase of ration cards attached to each FPS. The Government issued G.O.Ms. No. 35, dated 17.09.2007, for

creation of new FPS by bifurcation of existing shops keeping the norm of 400 BPL cards and 50 APL cards. In case there are more number of cards in excess of the norms in a village, there can be two FPSs provided the total number of BPL cards in that village is not less than 600 and FPSs should be attached equal number of cards. Therefore, proposals are submitted by RDO to District Collector, who by proceedings dated 14.03.2008 directed bifurcation. Bayyaram FPS was divided into FPS-I and FPS-II with 307 cards each. Similarly, Kolgoor FPS was bifurcated into FPS-I and FPS-II with 318 and 317 cards respectively. After such bifurcation, a notification dated 15.01.2009 was issued inviting applications.

3. In the counter affidavit filed in W.P. No. 27032 of 2009, which is filed for renewal of authorization, the RDO states that the petitioner was temporarily appointed and that as the FPS was earmarked for Scheduled Tribe candidate, renewal was not made. For ready reference, the contents of the counter are extracted as under.

It is submitted that the writ petitioner was appointed temporarily as F.P. Shop dealer of Kolgur village in the year 2001 for a period of (6) months vide Revenue Divisional Officer, Siddipet Proc. No. B/4285/2001, dated 24.11.2001, the main reason for his temporary appointment is that the Fair Price Shop Dealer of Kolgur village was reserved for ST/PHC and notification was issued in file No. B/2942/2000, dated 16-10-2001. The reservation of Fair Price Shop to ST/PHC category is to achieve the target cent per cent in favour of reserved categories as per policy of Government. But no applications received from the reserved categories in response to notification for which the steps taken to fill up the vacancy of Fair Price Shop only to avoid the inconvenience to the public under Public Distribution System and in view of it the writ petitioner herein was appointed as Fair Price Shop and same was renewed till 31-03-2007. Thereafter there is no renewed to his authorisation. But his appointment has not been regularized till to date due to which the writ petitioner is not eligible to continue as temporary dealer more over the percent of reservation is not achieved in favour of Scheduled Tribe candidates and in view of it also the writ petitioner is not eligible to continue as temporary dealer. It is submitted that the instructions were issued by the Government in G.O.Ms. No. 35, dated 17.09.2007 that in rural area each Grampanchayat should have at least one Fair Price Shop with a minimum of (400) BPL cards and (50) APL cards. In case more number of cards in excess of minimum number of cards these can be two Fair Price Shops provided that total number of BPL cards in that village should not less than (600). In Kolgur village the total population is (2431) and the existing ration cards increased to (635) during the exchange a new rations cards taken up through IRIS system due to which and as per Government instructions steps were taken up to create a new Fair Price Shops as Kolgur-II and sanction was also accorded. After sanction of new Fair Price Shop notification was issued calling applications from eligible candidates in file No. B/860/2007, dt.15-01-2009 to appoint as Fair Price Shop Dealer of Kolgur-II. Aggrieved to the notification the writ petitioner along with another has approached the Hon''ble

High Court and filed W.P. No. 1715 of 2009 and this Hon'ble Court granted interim stay in W.P.M.P. No. 2163 of 2009 in W.P. No. 1 715/2009, dated 03.02.2009. This issue is pertaining to creation of a new Fair Price Shop in the village and counter affidavit also has been filed and no orders received till to date.

4. The counsel for petitioners and Assistant Government Pleader for Civil Supplies made elaborate submissions. They also referred to District Collector v. B. Suresh 1999 ALT (Rev.) 246 (SC) : 2000 (1) ALD 9 (SC) : 1999 (6) ALT 111 (DNSC), I. Manga Raju Vs. District Collector and Others, and T. Ramanjaneyulu v. State of A.P. 2009 (1) ALD (NOC 12) 2009. The points that arise for consideration in the light of the submissions of the counsel are considered one after the other.

(i) Bifurcation of Bayyaram and Kolgoor FPSs

5. The bifurcation is challenged on the ground that it violates of principles of natural justice and that it is in contravention of the norms prescribed by the Government in G.O. Ms. No. 35, dated 17.09.2007. Both the submissions do not merit any consideration. In B. Suresh (1 supra), the Supreme Court considered the question as to whether prior notice is required before FPS is bifurcated. Answering the question in the negative, their Lordships held.

Under the provisions of the Andhra Pradesh Scheduled Commodities (Regulation of Distribution by Card System) Order, 1973, which order has been framed under the provisions of the Essential Commodities Act, 1955, a Fair Price Shop Dealer has no right to be appointed as such dealer. The licence which such dealer has obtained under the provisions of the Act to deal with the commodities has not been cancelled. The right to trade under Article 19(1)(g) of the Constitution of India is not being affected in any manner. The Government, as a policy decision, decided to reduce the number of cards per dealer. Such decision does not affect the rights, if any, of the Fair Price Shop Dealers and as such the High Court was in error to hold that they were to be given any notice prior to the impugned decision of the State Government.

6. G.O.Ms. No. 35, dated 17.09.2007 was issued by the Government for rationalization of existing FPSs in the State by attaching the required number of cards to each shop for the convenience of the cardholders in locality and keeping in view the economic viability of the FPS. These norms prescribed are as follows.

5. Government after careful consideration of the matter hereby order for rationalisation of existing fair price shops in the State by attaching the required number of cards to each shop for convenience of the cardholder in the locality and keeping in view the economic viability of the fair price shop. The following instructions shall be scrupulously followed in the rationalisation of the fair price shops.

(a) Rural Areas: The number of IRIS based ration cards to be attached to each fair price shop is 400 to 450 BPL and 50 pink cards.

(b) Urban Areas: The number of IRIS based ration cards to be attached to each fair price shop is 500 to 550 BPL and 250 pink cards in Municipalities and erstwhile Taluk Headquarters.

(c) Corporations: The number of IRIS based ration cards to be attached to each fair price shop is 600 to 650 BPL cards and 400 pink cards.

6. The following norms shall be followed in the process of rationalisation of fair price shops.

(i) Hyderabad city - If the cards of the existing fair price shop is more than the minimum of 600 cards (White/AAY/AP/Crippled weavers) and 400 pink cards the excess number of cards of such fair price shop shall be transferred to a new fair price shop to be located in the same locality.

(ii) Opening of a fair price shop within one kilometer radius of the residence of the card holder shall be scrupulously followed:

(iii) In Municipalities/erstwhile taluk head quarters (urban), each fair price shop should have a minimum of 500 BPL cards.

(iv) In Mandal headquarters each fair price shop should have at least one F.P. Shop with a minimum of 400 BPL cards and 50 APL cards. In case, there are more number of cards in excess of the minimum number of cards i.e., 400 BPL and 50 APL in a village there can be two FP shops, provided the total number of BPL cards in that village is not less than 600 and the number of BPL and APL cards should be attached to two fair price shops equally.

7. Emphasis is laid by the counsel on paragraphs 5(a) and 6(iv) of the above Government Order. Prima facie the two sub paragraphs of the CO., support submission that every FPS should have minimum 400 BPL cards and 50 APL cards. But a deeper probe belies any such contention. A minimum of 400 BPL and 50 APL is necessary. This is, however, subject to the second part of the paragraph 6(iv). According to this, if there are more number of cards in excess of minimum number of cards of 400, there can be two fair price shops provided there will not be less than 600 cards in a village in which case these cards can be equally attached to two FPSs. Having said that there should be minimum 400 cards in the village why the Government prescribed of two FPSs if the number of cards is more than 600. The reasoning is found in paragraph 4 of the Government Order which reads as under.

The paramount consideration in creating the new fair price shop should be the convenience of the cardholders. To strengthen the public distribution network further it is decided by the Government to open 2850 fair price shops additionally on account of the rationalization. This is only an indication of possible number of fair price shops approximately to be opened. But the number may be more or less depending on the need. Collectors are requested to examine the requirement of fair price shops for each and every Village/Ward. Keeping in view of the following guidelines and create new shops and intimate the number of

shops finally opened in the district to the Government within 45 days. All the cardholders of the newly created shops shall be intimated on the creation of new shops locality where they can draw the commodities.

8. In plain terms, the intention of permitting two FPSs in a village if the number of cards are 600 or more even though the ideal number is 400 cards for each shop is for the convenience of the cardholders. Judicial notice can be taken of the facts that almost all the rural and urban poor people depend on the FPSs for their daily food needs. The Government thought it fit that one FPS in a village is 600 and more cards would cause inconvenience to cardholders. The submission of the learned Counsel that under no circumstances, the number of cards in the existing shop can be reduced below 400 cannot be accepted. In a given case, if there are 600 cards in village and second shop is created by bifurcating the existing shop, it might result in the original shop retaining 400 cards and newly created shop gets 200 cards, it would certainly be not economically viable. Therefore, the interpretation placed by the counsel is unsustainable. From the above discussion, two consequences that emerge are (i) no notice is necessary before the District Collector passed orders bifurcating the shop; and (ii) it is not necessary to maintain minimum 400 cards if the single village shop has 600 cards. It is always permissible for the District Collector to bifurcate the FPS so that in the village of 600 cards into two shops attaching the BPL and APL cards equally. In the case of Bayyaram and Kolgoor villages, the District Collector has followed paragraphs 5 and 6(iv) of G.O.Ms. No. 35 correctly and the same cannot be said to be contrary to norms in Government Order.

Non Renewal of Authorization (W.P. No. 27032 of 2009)

9. The plea of the Government that the petitioner was appointed as temporary dealer is supported by documentary evidence. The original file is placed before this Court. A perusal of the same would show that a notification was issued on 15.01.2001 inviting applications from Scheduled Tribe candidates or physically handicapped candidates for being appointed as FPS dealer of Kolgoor (before bifurcation), no candidate belonging to these categories was available. Therefore, the second petitioner was appointed as temporary FPS dealer for a period of six months. It is the case of the petitioner that till 31.03.2007 the petitioner's authorization was renewed and thereafter in spite of repeated requests, the authorization was not renewed. Even if authorization was renewed, the same cannot be characterized as permanent appointment. Indeed, on 28.07.2009, a show cause notice was issued to the petitioner to explain as to why authorization could not be cancelled and why he should not be removed from the dealership. The petitioner submitted explanation on 12.08.2009. Even before any orders are passed, the petitioner approached this Court and obtained interim orders for continuation of FPS dealership. Therefore, non-renewal of the petitioner's authorization cannot be faulted. Mere renewal of licence of temporary authorization from time to time does not confer any right on the petitioner.

Present Position (W.P. No. 1715 of 2009)

10. By reason of proceedings of the District Collector, dated 14.03.2008, Kolgoor village has now FPS-I and FPS-II. FPS-I is reserved for Scheduled Tribe and FPS-II is reserved for OC (Women). Learned Counsel for second petitioner submits that as her client is continuing as FPS dealer from 2001, the RDO may proceed with making appointment of permanent dealer for Kolgoor FPS-II (OC women) and continue the petitioner as dealer of Kolgoor FPS-I. This Court is not able to countenance the submission. When once FPS is reserved to a particular class of people, it is only for the RDO to rotate the reservation in accordance with G.O.Ms. No.52, dated 18.02.2008. As Kolgoor shop was reserved for ST/PH in 2001, it is always open to the RDO for reconsideration of the petitioner. In this writ petition, no relief can be granted. The petitioner is continuing as temporary FPS dealer from 24.11.2001. Therefore, till further arrangements are made for appointment of regular dealers for Kolgoor FPS-I and FPS-II, the petitioner, if there are no other allegations against him, may be continued as temporary dealer.

11. In the result, W.P. No. 1715 of 2009 is dismissed and W.P. No. 27032 of 2009 is disposed of subject to above observations. There shall be no order as to costs.