
(2003) 04 AP CK 0087

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3843 of 1997

Nanjala Bayamma

APPELLANT

Vs

Revenue Divisional Officer and Another

RESPONDENT

Date of Decision : 04-04-2003

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 38

Citation : (2003) 3 ALD 500 : (2003) 3 ALT 585

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

Bench : Single Bench

Advocate : R. Kameswara Rao, for the Appellant; Nanda Ramchandra Rao, Government Pleader for Civil Supplies, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The petitioner assails the notification issued by the first respondent dated 15-2-1997 inviting applications from physically handicapped women (PHC women) for being appointed as fair price shop dealer and for being granted authorization as such dealer under the A.P. Scheduled Commodities (Regulation of Distribution by Card System) Order, 1973 ("the Control Order" for brevity). This Court by an order dated 27-2-1997 directed that selections in pursuance of the notification dated 15-2-1997 shall not be finalised.

2. It is the case of the petitioner that she belongs to Pallipadu Village in Khammam District. A vacancy of dealer of fair price shop No. 2 arose in the said village. The first respondent issued notification dated 29-1-1997 inviting applications and the petitioner was one of the candidates. However, on a representation being made by the Sarpanch that there was no proper publicity about the notification, the first respondent cancelled the notification dated 29-1-1997 and issued a fresh notification dated 15-2-1997. She went to the office of the second respondent on 24-2-1997 to submit her application. The application was not received on the ground that women candidates among open

category cannot be appointed. Hence, she filed this writ petition.

3. Learned Counsel for the petitioner, Sri R. Kameswara Rao, contends that as per condition No. 8 of the notification, women candidates are eligible for being appointed as fair price shop dealers and that preference is only to be given to PHCs and no reservation for PHC women can be provided. Therefore, the action of the respondents in refusing the petitioner's application is improper and illegal. He also submits that preference sought to be given is irrational and arbitrary.

4. Ms. Nanda Ramchandra Rao, Learned Government Pleader for Civil Supplies, however, submits that notification itself was issued inviting applications only from PHC women and, therefore, condition No. 8 of the impugned notification cannot be read in isolation. She also placed reliance on the revised guidelines for appointment of fair price shop dealers issued by the Government vide G.O. Ms. No. 198, Food, Civil Supplies and Consumer Affairs (CS-IV) Department, dated 6-2-1996.

5. The revised guidelines issued vide G.O. Ms. No. 198, dated 6.2.1996, by paragraph 7 provide that while making appointments, reservation should be made for Scheduled Castes, Scheduled Tribes, Backward Classes and Physically Handicapped persons at 15%, 6%, 25% and 3% respectively. When the guidelines specifically provide for reserving fair price shops for PHCs at 3%, it would be futile for the learned Counsel for the petitioner to contend that reservation cannot be provided to PHCs. The impugned notification dated 15-2-1997 was issued inviting applications only from women candidates (PHC) for being granted authorization of fair price shop. Even if the notification does not prohibit accepting applications from other women belonging to other classes, the same does not in any way mean that the first respondent has to accept the application from women belonging to O.C., who are not physically handicapped. It is not the case of the petitioner that she is a physically handicapped person and her application should be accepted. The submission that "preference" cannot be equated with reservation also cannot be accepted having regard to the impugned notification itself. G.O. Ms. No. 198, dated 6-2-1996 provides 3% reservation for PHCs and if the appointing authority reserves the post for women, there is no illegality or impropriety in the same.

6. The Parliament has enacted the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ("the Act"). The Act is intended to achieve the desired need for safeguarding the rights of persons with disabilities and enabling them to enjoy equal opportunities and help them to fully participate in natural life. Section 32 deals with identification of posts which can be reserved for persons with disabilities. Section 33 speaks of reservation of such percentage of vacancies not less than 3% for persons or class of persons with disability of which one per cent each shall be reserved for persons suffering from blindness, hearing impairment and locomotor disability or cerebral palsy. u/s 38, the appropriate Governments and local authorities are under an obligation to formulate scheme for ensuring employment of persons with disabilities. There

are provisions in the Act which require shifting/ transferring an employee of the establishment to the post with same scale of pay and service benefits in the event of the employee acquiring disability during the service. In a recent judgment in Kunal Singh v. Union of India 2003 AIR SCW 1013, the Supreme Court considered this aspect of the matter and held that Section 47 of the Act is mandatory and in construing the provisions of the socio beneficial enactment, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Therefore, the submission that the guidelines framed by the Government do not provide for reservation, but only preference can be given, cannot be accepted. Under the provisions of Article 256 of the Constitution of India, executive power of the State shall be so exercised so as to ensure compliance with the laws made by Parliament. All the laws and executive instructions issued by the State Government should be interpreted in the light of the law enacted by the Central Government.

7. Further, as noticed hereinabove, this Court allowed the selection to go on, but only directed that the same shall not be finalized. In such an event, it is the duty of the petitioner to bring all the selected candidates on record who have legitimate expectation for proper adjudication of the dispute. In the absence of proper and necessary parties, writ petition cannot be accepted.

8. The writ petition fails and is accordingly dismissed. There shall be no order as to costs.