
(1991) 06 AP CK 0029
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 467 of 1991

P. Siva Kumar

APPELLANT

Vs

Katta Subbaiah and Others

RESPONDENT

Date of Decision : 11-06-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1991) 2 ALT 471

Hon'ble Judges : Ranga Reddy, J; Jagannadha Rao, J

Bench : Division Bench

Advocate : M.N. Narasimha Reddy, for the Appellant; P. Veera Reddy and Govt. Pleader for C.S. for Respondent Nos. 2 to 4, for the Respondent

Final Decision : Allowed

Judgement

M. Jagannadha Rao, J.—This writ appeal is preferred against the order of the learned Single Judge dated 5-2-1991 passed at the admission stage in W.P. No. 1567/91 granting stay of the operation of impugned order dated 31-12-1990. The grievance of the appellant who was the 4th respondent in the writ petition is that the writ petition was disposed of affecting his rights but no notice was given to him. It is contended that the writ petition ought not have been disposed of finally, at the admission stage, affecting his rights without notice to him.

2. The brief facts of the case are as follows: The writ petitioner Katta Subbaiah was appointed as Fair Price Shop Dealer on 18-12-1987 on temporary basis upon the suspension of the regular Fair Price Shop Dealer. Thereafter, a notice was issued on 1-4-1990 inviting applications for appointment as regular Fair Price Shop Dealer in respect of the shop. Pursuant to the notification issued by the Government in G.O.Ms No. 19 (F&A) CS-II Dept., dated 8-1-1990 the writ petitioner Katta Subbaiah and P. Siva Kumar the appellant before us (4th respondent in the writ petition) applied along with certain other persons. After considering the merits of the various candidates the Revenue Divisional Officer, Rajampet passed an impugned order on 31-12-1990 appointing the appellant as

Fair Price Shop Dealer. Questioning the said order, the writ petitioner filed an appeal on 29-1-1991 before the Joint Collector, Cuddapah. It is stated that the writ petitioner also applied for stay and that inasmuch as no orders were passed thereon, the writ petitioner filed the writ petition out of which this appeal arises, on 4-2-1991. In the writ petition the petitioner did not seek for disposal of the stay application but questioned the order dated 31-12-1990 passed by the Revenue Divisional Officer in respect of which he had already filed an appeal before the Joint Collector. The writ petition came up for admission on 5-2-1991. The following order was passed by the learned Single judge.

"The petitioner was already Fair Price Shop Dealer prior to the notification issued in pursuance of G.O.Ms. No. 19 dt. 8-1-1990. In pursuance of G.O.Ms. No. 19 selections were made and R-4 was selected by means of order dated 31-12-1990. Against the order, the petitioner filed an appeal, but no stay has been granted, pending disposal of the appeal. There will be stay of the operation of the impugned order pending disposal of the appeal and if the petitioner was distributing the commodities as on the date of filing of the appeal, he will be continued as such till the disposal of the appeal. The appeal shall be disposed of within six weeks from the date of receipt of this order.

The writ petition is accordingly disposed of. No costs.

It will be noticed that at the stage of admission of the writ petition the appellant, who was 4th respondent in the writ petition, had no notice. According to the appellant, he came to know about the impugned order only on 20-2-1991 and thereafter he filed the present writ appeal on 20-3-1991. An objection was raised as to limitation. But a Division Bench of this Court passed an Order on 9-4-1991 that the appeal was presented in time having regard to the fact that the appellant came to know about the impugned order passed by the learned Single Judge only on 20-2-1991. Thereafter, the appeal is now coming up before us. With the consent of counsel on both sides we are disposing of the main writ appeal.

3. It would be noticed from the order passed in the writ petition on 5-2-1991 at the stage of admission that thereby the learned Single Judge granted stay of the order dated 31-12-1990 by which the Revenue Divisional Officer appointed the appellant as Fair Price Shop Dealer. The writ petitioner preferred an appeal before the Joint-Collector and is also said to have applied for stay. It is stated that no order of stay was passed in the stay petition.

4. In our view, the order passed in the writ petition seriously affected the rights of the appellant and inasmuch as the writ petition was finally disposed of at the admission stage, the appellant had no opportunity to contend that the writ petitioner had no prima facie case for grant of stay. We can understand such an order of stay being passed in the miscellaneous petition in the writ petition while keeping the writ petition pending, so that it would have been open to the appellant to come to this court to make his submissions in regard to the order

granting interim stay. But instead of granting interim stay in the miscellaneous petition, the writ petition itself was disposed of granting stay and without notice to the appellant. We are, therefore, clearly of the view that the Order is in breach of principles of natural justice and is liable to be set aside.

5. Even in the main writ petition, it would be normally proper for this court to direct the Joint Collector to dispose of the stay application and to pass some order for the period during which the stay application would be pending before the Joint Collector. In any event if this court wants to stay the order of the Revenue Divisional Officer it is for the court to give a finding as to whether any prima facie case is made out by the writ petitioner. It is not open to this court just to pass a stay order without finding as to prima facie case and, at any rate, without notice to the affected party.

6. It could be noticed that according to the appellant he did not receive the stay order till 20-2-1991 and in the mean time he obtained necessary licences and even started distributing essential commodities from 8-2-1991. These are all matters which will have to be taken into account by the appellate authority while disposing of the stay petition.

7. For the aforesaid reasons, we set aside the order of the learned single Judge and direct the Joint Collector to dispose of the stay application, if, any, filed by the writ petitioner within one week from the date of the receipt of this order after giving notice to both the parties and hearing them. It is also open to the Joint Collector to dispose of the main appeal within four weeks from the date of receipt of this order. It should not be understood that this Court has decided anything with regard to the merits of the claims of either the writ petitioner or of the appellant. Writ appeal allowed and disposed of accordingly. No costs Advocate's fee Rs. 250/-.