

(2007) 11 AP CK 0011
In the Andhra Pradesh High Court
Case No : Writ Petition No. 19899 of 2007

P. Suresh

APPELLANT

Vs

The Revenue Divisional Officer and Others

RESPONDENT

Date of Decision : 23-11-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 15(1), 15(3), 15(4)

Citation : (2007) 11 AP CK 0011

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : A. Prabhakar Rao, for the Appellant; G.P. for Civil Supplies for Respondents 1 and 2 and Kurra Srinivas, for the Respondent

Judgement

P.S. Narayana, J.—The Writ Petitioner, Mr. P. Suresh, filed this writ petition for a Writ of Mandamus declaring the order, dated 13.10.2001, in proceedings No. B/4075/2001, made by respondent No. 1, selecting respondent No. 3 as Fair Price Shop dealer of Shop No. 95, pursuant to the Notification, dated 30.09.2001, No. B/2836/2001-1 as illegal, arbitrary, contrary to the conditions stipulated in the Notification and consequently, to direct the respondents to set aside the order, dated 13.10.2001, in proceedings No. B/4075/2001, made by respondent No. 1 and authorisation issued pursuant thereto.

2. Sri A. Prabhakar Rao, the learned Counsel representing the Writ Petitioner had taken this Court through the contents of the affidavit filed in support of the writ petition, the counter affidavit filed by respondent No. 3 and also the reply affidavit. The learned Counsel also had drawn the attention of this Court to the interim order made in Writ Petition No. 21145 of 2001 and how the appointment was made during the period of the operation of the interim order and how the appointment to be declared as illegal being contrary to the interim order made by this Court. The learned Counsel also while elaborating his submissions would maintain that both the residential and educational qualifications are not satisfied. The learned Counsel also demonstrate that even from the very application made

by respondent No. 3 it is shown in the relevant column as "non-local", as belonging to Mattewada. The Counsel also explained how respondent No. 3 does not satisfy any of the eligibility criteria. While further elaborating the submissions, the learned Counsel would maintain that though the writ petitioner is treated as a temporary dealer by virtue of the regular authorisation, the petitioner to be treated on par with a regular dealer. The learned Counsel also would maintain that whether such authorisation is in accordance with law or not and validity thereof cannot be decided in the present writ petition. The Counsel would maintain that the question to be decided is whether respondent No. 3 satisfies the eligibility criteria on the aspect of locus standi. The learned Counsel made elaborate submissions. Further, the Counsel would contend that not disturbing this order would amount to an illegal order being continued and the same is impermissible. The Counsel also placed strong reliance on several decisions to substantiate his submissions. The Counsel also pointed out to the nature of interim orders which were made by this Court.

3. The learned Government Pleader for Civil Supplies had traced the historical background of this litigation and would maintain that the writ petitioner filed W.P. No. 21145 of 2001 before this Court and this Court was pleased to issue a direction that the selection pursuant in the notification, dated 30.09.2001, issued by the Revenue Divisional Officer, Warangal, may go on, but no authorisation shall be issued in favour of the prospective selection until further orders. The learned Government Pleader for Civil Supplies had also drawn the attention of this Court to the writ petitioner filing another Writ Petition No. 22409 of 2001 praying for suspension of the proceedings in B/3534/2001, dated 07.10.2001, through which Sri R. Srinivas was appointed as temporary fair price shop dealer for 95-Rangasaipet in the month of October, 2001. The learned Government Pleader for Civil Supplies also would maintain that the said Writ Petition was disposed of directing the respondents to continue the petitioner as a temporary fair price shop dealer till permanent arrangement is made. However, it is brought to the notice of the Court that in the light of the dismissal of Writ Petition No. 21145 of 2001, the petitioner has no right at all to contend that the petitioner to be continued as a fair price shop dealer of 95-Rangasaipet. In all fairness, the learned Government Pleader for Civil Supplies had drawn the attention of this Court to the relevant observations made in W.P. No. 21145 of 2001 to the effect that, "however, this will not preclude the authorities from considering the vacancy being notified afresh for other than S.C. category if it is possible as per the Government orders in vogue". The learned Government Pleader for Civil Supplies also would maintain that respondent No. 3 filed Writ Petition No. 20317 of 2006 before this Court and this Court directed Revenue Divisional Officer, Warangal to dispose of the representation purported to have been filed by said Kandukuri Parijatham and pass appropriate orders and she had also filed C.C. No. 350 of 2007 and this Court passed orders on 18.06.2007 to the effect that the said Parijatham to file appropriate representation before the Revenue Divisional Officer concerned within a period of 10 days and the said Revenue

Divisional Officer to dispose of the same and pass appropriate orders within a period of three weeks. The learned Government Pleader for Civil Supplies also had drawn the attention of this Court the said Parijatham had been informed vide office Memo No. E/4381/2004, dated 30.06.2007, that notification to fill up the vacancy of Fair Price Shop No. 95 is being issued and her application is on record and she will also be called for interview on par with the other applicants. But however, this Court observed that after perusing the proceedings issued by the respondent, this Court was of the opinion that the said order was not in tune with the spirit of the judgment of this Court. Hence, the learned Government Pleader for Civil Supplies would submit that on his advise, an authorisation was issued in pursuance of her appointment as per the notification. The learned Government Pleader for Civil Supplies ultimately, would conclude that the writ petitioner has no right to claim any of the reliefs prayed for in the present writ petition.

4. Sri Kurra Srinivas, the learned Counsel representing respondent No. 3 while making elaborate submissions would maintain that the writ petitioner has no locus standi to question the appointment of respondent No. 3 since the writ petitioner is only a temporary dealer. The learned Counsel also would submit that in the light of the orders made by this Court in prior writ petition No. 21145 of 2001, the petitioner has no right at all to re-agitate the self-same questions again and on this ground alone the writ petition is liable to be dismissed. The learned Counsel also explained the interim orders made, dated 10.10.2001, and how the said interim orders had been modified on 17.10.2001. The learned Counsel, while further elaborating the submissions, would maintain that when an order is made in ignorance of the statutory provision, the same to be treated as per in quiriā. The learned Counsel also would submit that the petitioner himself is not a resident of Rangasaipet. When that being so, to contend that respondent No. 3 is not a resident and she does not satisfy the residential qualification cannot be a sustainable stand. Further, the learned Counsel would submit that respondent No. 3 was appointed on regular basis and the writ petitioner being a temporary dealer cannot challenge her appointment on any ground whatsoever. The learned Counsel also placed sound reliance on decisions to substantiate his submissions.

5. Heard the counsel. Perused the affidavit filed in support of the writ petition, the counter affidavit filed by respondent No. 3 and also the reply affidavit filed by the writ petitioner and the instructions placed by the learned Government Pleader for Civil Supplies.

6. It is the case of the petitioner that he is a resident of Rangasaipet Village, Warangal Mandal, Warangal District and the petitioner possesses requisite qualifications and the eligibility criteria to be appointed as a Fair Price Shop dealer. It is stated that respondent No. 1 herein issued a Notification, dated 30.09.2001, in proceedings No. B/2836/2001-1, calling for applications from the eligible and suitable candidates for appointment as Fair Price Shop dealers. In

the said Notification, respondent No. 1 herein reserved more than 75% of shops for reserved categories such as S.C., S.T., and B.Cs. in violation of Article 14 and 15(1) of the Constitution of India. The petitioner filed a writ petition in W.P. No. 21145/2001 questioning the aforesaid notification. This Court while admitting the writ petition granted stay of all further proceedings of the Notification dated 30.09.2001. The petitioner was appointed temporarily as a Fair Price Shop dealer of Shop No. 95 of Rangasaipet village. Subsequently, his appointment was regularized and authorisation had been issued in my favour on 18.10.2005, which is valid up to 31.03.2007. The petitioner paid Rs. 300/- vide Challan No. 95059, dated 07.03.2007 for renewal of the application and his application for renewal of authorisation is pending before respondent No. 1 herein who is the competent authority. It is also stated that the proviso to Clause 5 (iv) of A.P. State Public Distribution System Control Order, 2001 envisages that authorisation shall not be deemed to have expired if an application for its renewal as required is pending before the competent authority. It is stated that the authorisation issued in his favour is still subsisting since no orders were passed on his application for renewal.

7. Strong reliance was placed on *P. Katama Reddy Vs. Revenue Divisional Officer, Anantpur and Others*, wherein the Division Bench observed as hereunder:

7. Equality clause enshrined in Article 14 of the Constitution of India which has two facets i.e. (a) equals shall be treated equally; and (b) unequals cannot be treated equally, but have to be treated unequally. The above equality clause is general in nature. Article 15 is an instance of the right of equality. Unlike Article 14 which is available to all persons, Article 15 is applicable only to citizens. Again, while Article 16(1) relates to public employment, Article 15(1) covers the entire field of discrimination. The fundamental right under Article 15(1) not to be discriminated in the matter of rights etc. conferred on the citizen is individual and personal in nature. A glance at Article 15(1) would make one feel that there should not be discrimination of any kind, be it on the ground of sex or any other ground. If understood so plainly, it satisfies de jure equality. But, the avoidance of discrimination aimed at by the Constitution makers will not become real until the State strives by its affirmative action to achieve de facto equality. Provision for equal employment opportunity is one such important affirmative action, as centuries of gender discrimination can be set right only by affirmative action. Women being weaker sex and thus weaker section of the society, need different treatment in order to attain a result which establishes an equilibrium between men and women. Emancipation of women can be made real, only if they are made self-reliant by economic independence. The State, from time to time has been taking effective steps for women empowerment in all fronts - Educational Economic and Political. Women reservation in fair price shops is an act of Economic empowerment of women. Gender disparity existed between men and women in the matter of running fair price shops. There was male domination and the State's action to provide equal opportunity for women to run the fair-price shops is a welcome measure. What is directly intended to abolish the existing

disparity cannot be accused of discrimination.

10. As such, we reject the argument advanced on behalf of the petitioners and hold that the reservation made for women in the matter of allotment of fair price shops is constitutionally valid, being directly traceable to the fundamental right under Article 15(3) specifically provided in favour of women read with Article 15(1) of the Constitution.

12. The impugned Governmental Memo is not happily and appropriately worded. While the emphasis is on the allotment of fair price shops to women candidates, again there is a contradiction that out of the fair price shops held by the individuals, 15% shall be reserved for S.Cs. 6% for STs., and 3% for physically handicapped taking both men and women into account. Then, it has to be understood that while S.C., S.T., and Physically Handicapped reservations shall be intact wherein both men and women can be appointed in accordance with their merit, the other vacancies conforming to 76% have to be filled-up by all women candidates only. We do not really appreciate this kind of classification in a classification where men are to be excluded by a Governmental policy in toto to be replaced by women in toto reserving all future vacancies for women, but again carving out an exception, insofar as S.Cs., S.Ts., and Physically handicapped are concerned, allowing men also to participate. If 100% reservation is to be achieved, there can be any exception of that nature as women is a class by itself not based on the caste or any such thing, but only based on gender and if that is the criterion, then again providing exception of participation of men for the reserved class - SC/ST/PH - will have no nexus to stand and there will be lack of intelligible differentia too. As such, the said discrimination among men one from reserved and another from unreserved violates equality clause enshrined under Article 14 of the Constitution.

16. As such, we hold that in the allotment of fair price shops, the Government cannot act at its will and pleasure and has got to follow the equality clause contained under Article 14 in general and Article 15(1) of the Constitution in particular, subject to such discrimination, which is permissible under Article 15(1) read with special reservation, which can be made under Article 15(3) of the Constitution of India.

19. Secondly, even with regard to the maximum percentage of reservations which can be carved-out, the ratio laid down by the majority decision in *Indira Sawhney's* case (supra) is an authoritative proposition limiting the reservation within 50% and not beyond 50%. *Indra Sawhney's* case (supra) did not accept the theory of proportionate representation and the emphasis was on adequate representation. Even if the proportionate representation theory, which is not the criterion, is to be considered the women forming equal or less than that of men population can never bargain more than 50%. The only theory that because the visibility of the women in running the fair price shops was less and to have more of such visibility of women, there should be a total reservation in their favour till they are equally visible in number, in running the fair price shops on par with

men, is also totally unacceptable and in fact, such an argument advanced regarding the need for total reservation for S.Cs., S.Ts., and B.Cs., on the ground that previously their participation in public employment was very less because of want of reservation and that there was a need to make-up that deficiency, was not accepted by the Supreme Court. As such, reservations can be carved-out for women for vacancies arising in fair price shops from the date of impugned Memo without any reference to making-up the deficiency. The other ground mentioned in the impugned Memo that since women manage the kitchen, the entire future vacancies in fair price shops should be allotted to them is totally irrelevant has got absolutely no intelligible differentia and is also devoid of any nexus. It is also apt to extract what B.P. Jeevan Reddy, J in his leading judgment speaking for the Supreme Court in Indra Sawhney's case (supra) has held:

It needs no emphasis to say that the principle aim of Articles 14 and 16 is equality and equality of opportunity and that Clause (4) of Article 16 is but a means of achieving the very same objective. Clause (4) is a special provision - though not an exception to Clause (1). Both the provisions have to be harmonised keeping in mind the fact that both are but the restatements of the principle of equality enshrined in Article 14. The provision under Article 16(4) - conceived in the interest of certain sections of society - should be balanced against the guarantee of equality enshrined in Clause (1) of Article 16 which is a guarantee held out to every citizen and to the entire society. It is relevant to point out that Dr. Ambedkar himself contemplated reservation being "confined to a minority of seats" (See his speech in Constituent Assembly, set out in Para 28). No other member of the Constituent Assembly suggested otherwise. It is, thus, clear that reservation of a majority of seats was never envisaged by the founding fathers. Nor are we satisfied that the present context requires us to depart from that concept.

From the above discussions, the irresistible conclusion that follows is that the reservations contemplated in Clause (4) of Article 16 should not exceed 50%.

This is the law of the land and the exception mentioned in the Indra Sawhney's case (supra) though in certain extraordinary situations 50% rule may be relaxed, is not applicable here either in the facts of these cases or the situation enumerated in Indra Sawhney's case (supra). Even while upholding the women reservation, the Supreme Court in a later judgment in Government of A.P. v. P.B. Vijay Kumar held:

A special provision contemplated by Article 15(4) like reservation of posts and appointments contemplated by Article 16(4), must be within reasonable limits. These limits of reservation have been broadly fixed at 50% at the maximum. The same reasoning would apply to Article 15(3) which is worded similarly.

8. It is also stated that this Court was pleased to dismiss W.P. No. 21145 of 2001 with an observation that the order passed by this Court does not preclude the authorities from considering the vacancy being notified afresh for other than S.C.

category, if it is possible as per the Government orders in vogue. It may be appropriate to have a look at the relevant portion of the order made in W.P. No. 21145 of 2001 and the same reads as hereunder. It seems, on the death of the original permanent dealer of shop No. 95 of Rangasaipeta, Warangal, the petitioner was appointed on temporary basis. Thereafter, for filling up the said vacancy along with some other vacancies on permanent basis, notification dated 30-9-2001 was issued by the 1st respondent- Revenue Divisional Officer, Warangal. According to the petitioner, 75% of the vacancies were reserved for S.Cs and B.Cs alone. If this is done, he will not be entitled to compete with others, since he belongs to O.C. category. The criteria for appointment of a fair price shop dealer is that the candidate should be a resident of that village and possess the requisite educational and age qualifications and also the reserved category, if any. In case of shop No. 95 of Rangasaipeta, the same is reserved for SC General. Petitioner belongs to open category. His grievance is that reserving shop No. 95 of Rangasaipeta for SC category is arbitrary and illegal.

Learned Government Pleader, on instructions, submits that the petitioner is not a resident of Rangasaipeta, apart from the fact that he was only a temporary dealer. He is not entitled for being considered as against shop No. 95 of Rangasaipeta, since it is reserved for SC category. The whole of the division is taken into consideration for the purpose of reservation of fair price shops. Since number of vacancies against SCs and BCs were not filled-up in the earlier recruitment, probably, 75% of the vacancies were reserved for them. The petitioner should not have any grievance for reserving shop No. 95 of Rangasaipeta for SC category and inviting applications from SC general category candidates. I am of the opinion that no case is made out by the petitioner for interfering with the notification issued by the 1st respondent against shop No. 95 of Rangasaipeta, Warangal. The Writ Petition is devoid of merits and is liable to be dismissed.

However, this will not preclude the authorities from considering the vacancy being notified afresh for other than SC category, if it is possible as per the Government Orders in vogue.

9. Further it is stated that respondent No. 1 vide proceedings, dated 13.10.2001, provisionally selected respondent No. 3 contrary to the terms and conditions of the notification, dated 13.09.2001. One of the conditions stipulated in the notification was that the candidate should be a resident of the village/area where the shop is notified and in the case of the Municipality the Ward in which the shop is notified. The impugned proceedings, dated 13.10.2001, discloses that respondent No. 3 is a resident of Mattewada village of Warangal Mandal, Warangal District, whereas the vacant Fair Price Shop No. 95 is located in Rangasaipet village. As such, respondent No. 3 is not eligible to be appointed as Fair Price Shop Dealer. Though respondent No. 3 was provisionally selected as a Fair Price Shop Dealer vide the impugned order, dated 13.10.2001, as the same was not given effect to and no authorisation was given in her favour due to

interim orders passed by this Court in W.P. No. 21145 of 2001. Respondent No. 3 cannot have any right whatsoever. Further, it is stated that it is reliably learnt that respondent No. 3 was issued authorisation in the second week of September, 2007. Thus, the appointment respondent No. 3 as Fair Price Shop Dealer of Shop No. 95, Rangasaipet village is contrary to the terms and conditions of the notification and the same is illegal inasmuch as the authorisation in favour of the petitioner is also subsisting.

10. Further it is stated that respondent No. 1 so far had not passed any order on the application submitted by the petitioner for renewal of authorisation for another period of two years commencing from 01.04.2001 to 31.03.2009. Further, respondent No. 1 has no authority to appointment respondent No. 3 as fair price shop dealer in his place during subsistence of authorisation given in his favour. As such, the impugned order, dated 13.10.2001, is liable to be set aside. Further, it is stated that the petitioner had not questioned the impugned order, dated 13.10.2001, because of pendency of Writ Petition No. 21145 of 2001 and further the petitioner did not question the impugned order, dated 13.10.2001, for the reason that the authorisation issued in his favour is still subsisting and at any rate had been subsisting by the date of the dismissal of W.P. No. 21145 of 2001. The authorities allowed the commodities to be distributed by the petitioner even in the month of September, 2007 and under those circumstances, it is stated that the petitioner is entitled for the reliefs prayed for.

11. This Court issued rule nisi on 21.09.2007 and granted interim suspension until further orders in W.P.M.P. No. 25657 of 2007 and further granted interim direction until further orders in W.P.M.P. No. 25658 of 2007. In W.V.M.P. No. 2713 of 2007, respondent No. 3 prayed for vacation of the interim order.

12. In the counter affidavit filed several averments had been specifically denied and it is stated that on 13.10.2001 appointment order was issued in favour of respondent No. 3 with a clear direction to remit Rs. 4,000/- trade deposit and also 200/- for issuance of authorisation and accordingly, the said amount was deposited and regular appointment of respondent No. 3 is supported by the proceedings of respondent No. 1 in Rc. No. B/4554/2001, dated 31.01.2002, wherein it is categorically stated that respondent No. 3 was regularly appointed as Fair Price Shop Dealer. The said proceeding is placed before the Court. Further specific stand has been taken that the contention that the petitioner is having a requisite qualification and the eligibility criteria are unsustainable contentions. The filing of the writ petition No. 21145 of 2001, the interim orders granted and the modification of the orders made, and the dismissal of the writ petition and how those orders would not come in the way of making an appointment had been well explained. It is also stated that in fact, the authorization, dated 20.09.2001, was issued in favour of respondent No. 3 much earlier to the filing of the petition and the said fact was suppressed by the petitioner. Further respondent No. 3 has taken a stand that the petitioner is not a resident of Rangasaipet and hence, the petitioner cannot maintain the present petition. The

alleged regular appointment of the petitioner is not supported by any control orders whatsoever. The procedure as contemplated by either 1973 Control Order or 2001 Control Order had not been followed. Further specific stand has been taken that the petitioner has no right whatsoever to question the appointment of respondent No. 3.

13. In the reply affidavit filed it is stated that the Government of Andhra Pradesh issued guidelines in the matter of appointment of Fair Price Shop Dealers prescribing the eligibility criteria namely, place of residence i.e. the candidate must be the resident of the Village or the Ward in case of Municipality where the vacancy of the shop is notified and educational qualification i.e. passing 10th class. The Revenue Divisional Officer issued a Notification dated 30.09.2001 in R.C. No. B/2836/2001 in accordance with the guidelines issued by the Government of Andhra Pradesh prescribing the eligibility criteria i.e. the candidate must be within the age of above 18 years and below 40 years and should be resident of respective local area and ward in case of Municipality where the shop is notified. In addition to that the candidate should pass 10th class and in case the candidates of 10th class are not available, they should have a minimum educational qualification of a pass in 5th class. Respondent No. 3 herein did not possess the eligibility criteria i.e. that the candidate must be resident of the area i.e. Rangasaipet, where the shop No. 95 is notified. Respondent No. 3 is a resident of Mattewada in Warangal Mandal. Therefore, respondent No. 3 did not satisfy the eligibility criteria for the appointment of Fair Price Shop Dealer. As such, the appointment made in favour of respondent No. 3 is liable to be set aside, as it was issued in contrary to the guidelines issued by the Government of Andhra Pradesh and the eligibility criteria stipulated in the Notification dated 30.09.2001.

14. Further in para 4 of the reply affidavit, while replying to the averments made in para 3 of the affidavit, the assertion of respondent No. 3 that she was appointed on 13.10.2001 and regular appointment was made on 31.01.2002 supports his contention that the appointment of respondent No. 3 as a Fair Price Shop dealer is illegal and contrary to the orders passed by this Court, dated 10.10.2001 in W.P.M.P. No. 26657/2001 in W.P. No. 21145/2001. This Court in the aforesaid Writ Petition specifically directed the Revenue Divisional Officer, Warangal to proceed with the selection of candidates pursuant to the impugned notification, but no authorisation shall be issued in favour of the prospective selection until further orders. The aforesaid order of this Court was modified on 17.10.2001 confining the order in respect of Shop No. 95 which is the subject matter of the writ petition. The order passed by this Court, dated 10.10.2001, was subsisting when the order of appointment was issued in favour of respondent No. 3. It is further stated that the order of appointment made in favour of respondent No. 3 dated 13.10.2001 is illegal and not sustainable as it was issued contrary to the terms and conditions of the Notification, guidelines and orders passed by this Court.

15. In reply to the paragraph 4 of the affidavit, it is stated that though the initial appointment of the petitioner was as a temporary dealer, but subsequently the competent authority issued the authorisation in his favour and the authorisation issued in his favour is subsisting, as such, the contention of respondent No. 3 that the petitioner being a temporary dealer has no right to continue as a Fair Price Shop dealer when respondent No. 3 was appointed as a regular dealer in respect of shop No. 95 is not correct. It is stated that as long as authorisation issued in his favour by the competent authority is subsisting, he is entitled to continue as a Fair Price Shop dealer. Further it is stated that respondent No. 3 originally is a resident of Chetla Mupparam village of Nellikuduru Mandal in Warangal District. Respondent No. 3 being a close relative of the then powerful political leader, secured the order of appointment of Fair Price Shop dealer in her favour.

16. Further in reply to para 5 of the averments made in the affidavit, it is stated that the authorisation issued in favour of the petitioner is still subsisting. Respondent No. 3 is not a resident of H. No. 19-5-115(19th ward). The House bearing No. 19-5-115 consisting of three rooms is owned by one Sri Velmathetti Dasharatham and a Ration Card bearing No. WAP 2181286A0316 was issued in his favour. Sri Dasharatham retained two rooms in his occupation and one room was let out in favour of P. Narsaiah, S/o. Shivaram, and in whose favour a Ration Card bearing No. WAP 218128600293 was issued. Respondent No. 3 herein never resided in the aforesaid premises, but on the other hand respondent No. 3 is a resident of Mattewade area ever since the year 2000-2006. Therefore, the contention of respondent No. 3 that she is a resident of Rangashaipet is false and incorrect. The affidavit filed by respondent No. 3 in W.P. No. 20317/2006 clearly discloses her place of residence. Recently, the husband of respondent No. 3 was given a house bearing No. 16-9-925 (16th ward), Puppallagutta area by Government, now respondent No. 3 with her family members residing in the aforesaid premises i.e. 16th ward. Therefore, the contention of respondent No. 3 that she satisfied eligibility criteria namely, place of residence of the area where the shop is notified is false.

17. Further in reply to the averments made in the affidavit filed in support of the vacate application in para 6, 7 and 8 specific averments were made in para 6, 7, 8 and 9 of the reply affidavit.

18. These are the respective stands taken by the respective parties. Several facts appear to be not in controversy, though as far as the qualifications and the eligibility criteria are concerned there appears to be some controversy between the parties.

19. In *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, , on the aspect of locus standi the Apex Court observed:

8. The first question is whether the appellant had locus standi to file a petition in the High Court under Article 226 of the Constitution. This Court in *The Calcutta*

Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, , dealing with the question of locus standi of the appellant in that case to file a petition under Article 226 of the Constitution in the High Court observed:

Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. It is, therefore, clear that persons other than those claiming fundamental right can also approach the Court seeking a relief thereunder. The Article in terms does not describe the classes of persons entitled to apply thereunder; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right.... The right that can be enforced under Article 226 also shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified.

Has the appellant a right to file the petition out of which the present appeal has arisen? The appellant is the President of the Panchayat Samithi of Dharmajigudem. The villagers of Dharmajigudem formed a committee with the appellant as President for the purpose of collecting contributions from the villagers for setting up the Primary Health Centre. The said committee collected Rs. 10,000 and deposited the same with the Block Development Officer. The appellant represented the village in all its dealings with the Block Development Committee and the Panchayat Samithi in the matter of the location of the Primary Health Centre at Dharmajigudem. His conduct, the acquiescence on the part of the other members of the committee, and the treatment meted out to him by the authorities concerned support the inference that he was authorized to act on behalf of the committee. The appellant was, therefore, a representative of the committee which was in law the trustees of the amounts collected by it from the villagers for a public purpose. We have, therefore, no hesitation to hold that the appellant had the right to maintain the application under Article 226 of the Constitution. This Court held in the decision cited supra that "ordinarily" the petitioner who seeks to file an application under Article 226 of the Constitution should be one who has a personal or individual right in the subject-matter of the petition. A personal right need not be in respect of a proprietary interest: it can also relate to an interest of a trustee. That apart, in exceptional cases as the expression "ordinarily" indicates, a person who has been prejudicially affected by an act or omission of an authority can file a writ even though he has no proprietary or even fiduciary interest in the subject-matter thereof. The appellant has certainly been prejudiced by the said order. The petition under Article 226 of the Constitution at his instance is, therefore, maintainable.

20. The order in W.P. No. 21145 of 2001, dated 29.09.2006, already specified supra, being self-explanatory the same need not be repeated in elaboration. The conditions were specified in the notification. The qualifications and the eligibility criteria essential for being selected as Fair Price Shop dealer, also are not in

serious dispute. In Writ Petition No. 21145 of 2001, on instructions, the learned Government Pleader submitted that the petitioner is not a resident of Rangasaipet, apart from the fact he was only a temporary dealer and these aspects had been recorded. In the conclusion, no doubt, it was observed that, "however, this will not preclude the authorities from considering the vacancy being notified afresh for other than S.C. category, if it is possible as per the Government orders in vogue. But, the fact remains that the writ petition was dismissed. It appears that the principal question which had been agitated is in relation to the reservation of fair price shop in the said Writ Petition No. 21145 of 2001. It is stated that the said order had attained finality since the same was not carried by way of writ appeal. The forum of authorisation and certain proceedings were placed before this Court to show that the writ petitioner is a resident of Rangasaipet. No doubt, the proceedings do reflect the same, but that by itself cannot be taken as proof of the residential qualification. Even otherwise, the writ petitioner is only a temporary dealer. Certain submissions made in relation to the authorisation cannot enure to the benefit of the writ petitioner and at any rate, those would not confer the status of permanent dealership on the writ petitioner. The learned Counsel for the writ petitioner, on the aspect of eligibility criteria, the qualifications and the validity of the appointment made in contravention thereof, placed strong reliance on Gopal Krushna Rath Vs. M.A.A. Baig (Dead) by Lrs. and Others, , Smt. Ravinder Sharma and Another Vs. State of Punjab and Others, and State of M.P. and Others Vs. Shyama Pardhi etc. etc., .

21. Further strong reliance was placed on Dhampur Sugar (Kashipur) Ltd. Vs. State of Uttranchal and Others, , wherein the Apex Court at para 67 observed that

Now, it is well-settled and needs no authority for holding that every power must be exercised bona fide and in good faith. Before more than hundred years, Lord Lindley said in General Assembly of Free Church of Scotland v. Overtaun 1904 AC 515 : 20 TLR 370; "I take it to be clear that there is a condition implied in this as well as in other instruments which create power, namely, that the powers shall be used bona fide for the purpose for which they are conferred". In other words, every action of a public authority must be based on utmost good faith, genuine satisfaction and ought to be supported by reason and rationale. It is, therefore, not only the power but the duty of the Court to ensure that all authorities exercise their powers properly, lawfully and in good faith. If powers are exercised with oblique motive, bad faith or for extraneous or irrelevant considerations, there is no exercise of power known to law and the action cannot be termed as action in accordance with law.

22. It is no doubt true that when qualifications are prescribed for appointment and when the eligibility criteria are to be satisfied, in the absence of such satisfaction, appointments, if any, made in such cases for non- satisfaction of the eligibility criteria of qualifications are to be held to be invalid. On facts, elaborate submissions were made by the Counsel representing respondent No. 3 that in

the light of the specific averments there cannot be any doubt whatsoever that the educational qualification is well satisfied by respondent No. 3 and as far as the residential qualification is concerned the same is also satisfied. At any rate, the writ petitioner is not having locus standi to question the same. It is pertinent to note that in the application itself it was specified as "non-local" and Mattewada had been mentioned. No doubt, strong reliance was placed on a decision in B. Bala Seshanna Vs. District Collector and Others, , wherein the learned Judge observed that the temporary Fair Price Shop Dealer appointed under the A.P. Scheduled Commodities (Regulation and Distribution by Card System) Order, 1963, cannot be deemed to be a permanent fair price shop dealer within the meaning of the Control Order 2001. To explain the aspect of obiter dicta and per incuriam and the binding precedent. Strong reliance was placed on *Thuraka Onnuramma v. Tahsildar*, Kadir 1982 A.L.T. 276.

23. In the light of the facts and circumstances and also in the light of the orders made in W.P. No. 21145 of 2001, the writ petitioner cannot be permitted to agitate the said question. At the same time, it appears when clear interim orders made by this Court were in force though ultimately, the writ petition was dismissed, respondent No. 3 was appointed, may be under the threat of contempt proceedings. From the nature of the orders made, this Court is of the considered opinion that in a way conflicting orders were made may be in pursuance of the directions of this Court and consequent instructions issued by the learned Government Pleader for Civil Supplies. Be that as it may, there cannot be any doubt whatsoever that an order of appointment was obtained under peculiar circumstances by respondent No. 3. As far as residential qualification is concerned, respondent No. 3 cannot contend otherwise in a way is estopped from contending otherwise by virtue the of application wherein it is shown as non- local. When the residential qualification is not satisfied, the appointment made in violation thereof, further in violation of the directions of this Court which was in force at the relevant point of time, at any stretch of imagination cannot be said to be a valid appointment or an appointment made in accordance with law. Hence, this Court is left with no other option except to hold that the appointment of respondent No. 3 is also not in accordance with law. It is no doubt true that the writ petitioner cannot re-agitate the question in the light of the prior orders made by this Court in W.P. No. 21145 of 2001. Hence, this Court is of the considered opinion that though the writ petitioner has no legal right, the dismissal of the writ petition should not enure to the benefit of respondent No. 3 who is also suffering from the disqualification and further the violation of the orders of this Court which were in force at the relevant point of time though subsequent thereto writ petition was dismissed. Balancing the facts and circumstances of the case, this Court is inclined to dispose of the writ petition with the following direction in the light of the specific observations made supra, further keeping in view the last portion of the order made in writ petition No. 21145 of 2001:

Let the competent authority notify the vacancy again and proceed with the

process of selection in accordance with law. Till then status quo as on today to be maintained. It is made clear that neither writ petitioner nor respondent No. 3 can claim any rights whatsoever relating to the dealership in question.

24. With the above observations, the writ petition is disposed of. No costs.