
(2014) 10 AP CK 0078

In the Andhra Pradesh High Court

Case No : Writ Petition Nos. 25823, 25826, 25830, 25834 and 25838 of 2014

S. Babjan

APPELLANT

Vs

The Government of Andhra Pradesh

RESPONDENT

Date of Decision : 07-10-2014

Acts Referred:

Citation : (2015) 3 ALD 659

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : M. Prasada Rao, Advocate for the Appellant

Judgement

C.V. Nagarjuna Reddy, J.—These five writ petitions are filed by five fair price shop dealers, feeling aggrieved by separate but identical show cause notices-cum-suspension orders passed by respondent No. 2.

2. Barring W.P. No. 25826 of 2014, the impugned orders are ipsissima verba. The only additional allegation in W.P. No. 25826 of 2014 is that the petitioners fair price shop is being run benami by one R. Prabhakar Reddy.

3. On 04.09.2014, this Court granted interim orders in favour of the petitioners, while adjourning the case by two weeks for filing counter-affidavits by the respondents. Again on 18.09.2014, the cases were adjourned at the request of the learned Assistant Government Pleader for Civil Supplies for filing counter-affidavits. Today, at the hearing, the learned Assistant Government Pleader has requested for further time for filing counter-affidavits. As sufficient time was granted to the respondents for filing counter-affidavits, I do not find any reasonableness in the request of the learned Assistant Government Pleader for further time for filing counter-affidavits.

4. I have heard the learned counsel for the petitioners and the learned Assistant Government Pleader for Civil Supplies and perused the record.

5. The petitioners have been functioning as fair price shop dealers of different

fair price shops within the jurisdiction of respondent No. 2. It is alleged in the impugned proceedings that the Tahsildar, Kadiri, i.e. respondent No. 3 has inspected the fair price shops on different dates in close proximity with each other in August 2014 and submitted his report. Based on the said reports, respondent No. 2 has issued the impugned show cause notices-cum-suspension orders.

6. A perusal of the impugned orders in W.P. Nos. 25823, 25830, 25834 and 25838 of 2014 would show the imputations made against the petitioners are identical and the whole purport of these imputations is that the petitioners have not been distributing essential commodities on all thirty days in a month, that they have not been treating the cardholders respectfully, that they have not been maintaining the records and stock registers properly, that they have been distributing commodities by under-weighting and overpricing and that they have not been displaying stock boards and pricelists.

7. The additional allegation made in W.P. No. 25826 of 2014 is that the petitioner therein has allowed one R. Prabhakar Reddy to run the shop as her benami.

8. The petitioners specifically pleaded that respondent No. 2 has suspended their authorizations at the instance of the local M.L.A.

9. As rightly pleaded by the petitioners, no specific allegation of misfeasance and malfeasance in the running of shops such as diversion of essential commodities into black market has been made; nor respondent No. 2 found any variation in stocks in any of these cases. All the allegations are absolutely generic in nature without reference to any particular instance with regard to the commodities distributed by the petitioners.

10. The flimsy nature of the allegations is further evident from the impugned order in W.P. No. 25826 of 2014. The petitioner therein specifically pleaded that she is the wife of one R. Prabhakar Reddy. Allegation No. 1 in the impugned order in the said writ petition is to the effect that the petitioner is allowing one R. Prabhakar Reddy as her benami to run the fair price shop.

11. Under clause 2 of Annexure-I of the Andhra Pradesh State Public Distribution System (Control) Order, 2008, every authorized fair price shop dealer/nominated retailer/hawker shall only conduct the business and he/she shall be held responsible for all the acts of commission or omission in running the shop with the assistance of any family member. Thus under this clause a family member of the fair price shop dealer is entitled to assist him/her in the running of the shop and the dealer is vicariously liable for his/her actions. Undisputedly, Mr. R. Prabhakar Reddy, who was found to have been running the shop at the time of inspection, is no other than the husband of the dealer. Respondent No. 2 has termed the said person as the benami of the dealer.

12. In *K. Nirmala v. Revenue Divisional Officer, Ananthapur* this Court observed:

This Court has time and again held that an order of suspension of fair price shop

authorization being punitive in nature cannot be resorted to on trivial and flimsy grounds and that unless the appointing authority or the disciplinary authority has the reason to believe that the fair price shop dealer has been indulging in serious irregularities and that his further continuance pending enquiry as a dealer will cause serious prejudice to the public interest, suspension cannot be resorted to. It is regrettable that this principle is being ignored by the competent authorities in many a case

13. In *Thyrumala Setty Phanindra v. District Collector (CS), Guntur District* this Court held as under:

Any order of suspension, even if the same is passed pending enquiry, results in serious adverse consequences to the fair price shop dealer. While exercising this power, the appointing authority needs to use a proper sense of proportion. The power of suspension cannot be exercised as a matter of course. The main purpose of keeping dealership under suspension pending enquiry is to prevent the dealer from tampering with the record. Therefore, only when serious allegations of commissions and omissions in distribution of the essential commodities in the fair price shop are made and a prima facie case is established against the dealer, the power of suspension of authorisation has to be exercised. There may be certain allegations which may not warrant immediate suspension. The case on hand falls in this category where, no suspension is warranted as, it is a matter of verification with reference to evidence whether the petitioner has permitted a benami to run the fair price shop or not. Considering the fact that the petitioner's fair price shop is run without any variations between the stock register and the ground stock and without there being any complaints, from any card holders, of improper distribution of commodities and in the absence of any allegation that the petitioner or the person who is allegedly running the fair price shop is indulging in acts, such as diversion of the essential commodities into black market, the hasty action of respondent No. 2 in suspending the petitioner's authorisation cannot be sustained.

14. It needs to be observed that despite pronouncement of this Courts views in no uncertain terms in the aforementioned two Judgments, there is a spate of suspension of authorizations of fair price shop dealers in the State of Andhra Pradesh in recent times. This Court has been noticing that such suspension orders are being passed at will and in the present case it lends support to the allegations made by the dealers that these orders are being passed with a view to eventually remove them from the dealerships and get the persons of the choice of the persons at the helm of affairs appointed. The executive apparatus must do well to realize that the position of a fair price shop dealer is not a nominated one and that persons are appointed to that position upon their satisfying the selection criteria prescribed under the statutory rules/executive orders. A person who is duly selected and appointed as a fair price shop dealer shall not be attempted to be replaced at the will of persons occupying the position of power for the time being. Such a trend does not augur well for the

society governed by democratic principles and it mocks at the doctrine of fair play in action by the State and its functionaries. The continuance or otherwise of a fair price shop dealer must not depend upon the mercy of the individuals holding the position of power. While every corrupt or unscrupulous dealer shall be stripped of his dealership, authorizations of innocent dealers who may not have toed the line of a local leader in power in the past elections shall not be suspended or cancelled based on flimsy, frivolous and imaginary allegations. It is time that the licensing and disciplinary authorities must search their conscience before initiating disciplinary action against the fair price shop dealers to know whether the functioning of a dealer warrants initiation of any such action. They must not become tools in the hands of the powers that be who try to establish their own hegemony in the Public Distribution System as if the position of a fair price shop dealer can be doled out to the persons of their choice.

15. In State of U.P. Vs. Johri Mal, the Supreme Court has not minced words in expressing its thorough dissatisfaction at the way the District Government Counsel of the State were being changed only because a new party has taken over change of the Government. While emphasizing the need for keeping away the persons with political affinity from being appointed as the Government Counsel, the Supreme Court held at para-78 as under:

The State, therefore, is not expected to rescind the appointments with the change in the Government. The existing panel of the District Government Counsel may not be disturbed and a fresh panel come into being, only because a new party has taken over change of the Government.

16. In the absence of specific instances pertaining to the allegations mentioned in the impugned orders, the action of respondent No. 2 in resorting to suspension of the authorizations is wholly uncalled for. The allegations made by respondent No. 2 remained unsubstantiated in the orders and, in my opinion, they do not warrant a drastic action of suspension of authorizations pending enquiry.

17. For the above-mentioned reasons, the impugned orders to the extent of suspending the fair price shop authorizations of all the petitioners are set aside, leaving the petitioners free to submit their explanations to the show cause notices and the respondents to pass final orders, upon considering the explanations offered by the petitioners in a fair and objective manner, without being guided by extraneous considerations.

18. The writ petitions are accordingly allowed to the extent indicated above.

19. As a sequel to the allowing of the writ petitions, W.P.M.P. Nos. 32277, 32280, 32284, 32288 and 32292 of 2014 shall stand disposed of as infructuous.