(2007) 09 AP CK 0088

In the Andhra Pradesh High Court

Case No : Writ Petition No. 10669 of 2007

Venkata Ramana Agencies APPELLANT

Vs

The District Collector and Others RESPONDENT

Date of Decision : 05-09-2007

Acts Referred:

Petroleum Rules, 2002 — Rule 144
Rice Milling Industry (Regulation) Act, 1958 — Section 8(3)

Citation : (2007) 1 ALD 138

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

Bench : Single Bench

Advocate : Challa Dhanamjaya, for the Appellant; Assistant Government Pleader for Civil Supplies for Respondents 1 and 2, S. Nageswar Reddy for Respondent No. 3 and P.V. Sanjay Kumar, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—Heard Sri Challa Dhanamjaya, the learned Counsel representing the writ petitioner, the learned Assistant Government Pleader for Civil Supplies representing respondents 1 and 2, Sri S.Nageswar Reddy, the Standing Counsel for 3rd respondent and Sri P.V. Sanjay Kumar, the learned Counsel representing the 5th respondent.

2. The learned Counsel representing the writ petitioner had taken this Court through the contents of the affidavit filed in support of the Writ Petition and the objections raised and would maintain that the preliminary objection raised by Sri P.V. Sanjay Kumar, the learned Counsel representing the 5th respondent that the Writ Petition is not maintainable at the instance of a rival trader cannot be sustained. The learned Counsel also in detail had explained how there is some subsequent change of Law by relying upon certain decisions in this regard. The Counsel also further had pointed out that when other serious objections are there, to throw out a Writ Petition on the ground of such an objection relating to the maintainability, definitely would be unjust. The learned Counsel pointed out

to the relevant paras of the affidavit filed in support of the Writ Petition in this regard.

3. Sri Nageswar Reddy, the learned Standing Counsel representing the Municipal Corporation would submit that the Bye-Laws referred to in the affidavit filed in support of the Writ Petition no doubt are applicable even to the Kakinada Municipal Corporation. However, the said Bye-Laws may not be of much help to the writ petitioner.

4. Sri P.V. Sanjay Kumar, the learned Counsel representing the 5th respondent had taken this Court through the contents of the counter affidavit filed by the 5th respondent and would maintain that the Writ Petition is not maintainable at the instance of a rival trader like the writ petitioner and even otherwise in the light of the averments in detail made in the counter affidavit filed by the 5th respondent, the Writ Petition is liable to be dismissed. The Counsel also placed strong reliance on several decisions and would conclude that in the light of the decisions of the larger Benches of the Apex Court, it may have to be taken that the decisions of the smaller Benches to be treated as per incurium.

5. Heard the Counsel.

6. This Court ordered Notice before admission on 18-5-2007 and also made the following order:

Learned Counsel for the petitioner is permitted to take out notices to the respondents by registered post with acknowledgement due and file proof thereof. In the interregnum, the fourth and fifth respondents are refrained from establishing or operating any petrol pump, till 18-06-2007.

On 18-6-2007, this Court made the following order:

Counter affidavit has been filed by the 5th respondent.

I have heard the learned Counsel for both the parties.

Having regard to the facts and circumstances, the interim order dated 18-5-2007 shall stand modified, staying the commissioning of the retail outlet by the respondent Nos.4 & 5, till 25-06-2007. In the meanwhile, it is open to them to complete the construction work if any, in the premises in question.

7. The Counsel for petitioner filed W.P.M.P.No.16443/2007 praying for amendment of the prayer in the Writ Petition and the said application was ordered on 3-9-2007. In W.P.M.P.No.16963/2007 no orders need be passed since it is an application to implead the Director of Town and Country Planning, Government of A.P., 640, A.C. Guards, Hyderabad, as 6th respondent and hence the said application is hereby closed.

8. The relief prayed for in the Writ Petition, as amended by W.P.P.M.P.No.16443/2007, which had been ordered as specified supra, is as hereunder:

It is therefore prayed that this Hon''ble Court may be pleased to issue a writ of Mandamus, or any other appropriate writ, order or direction, declaring the proposed action of the respondents 1 to 3 in permitting the respondents 4 and 5 to start a new retail outlet in D.No.12-9-4, Jawahar Street, Kakinada by issuing ''No objection certificate'' dated 26-9-2006 and 15-9-2006 without considering the objections made by the petitioner on 13-9-2006 and 18- 12-2006, as illegal, arbitrary, contrary to the law and for a consequential order directing the respondents 1 to 3 not to permit the respondents 4 and 5 to start a new retail outlet in D.No.12-9-4, Jawahar street, Kakinada by setting aside the No Objection Certificates dated 26-9-2006 and 15-9-2006 issued by respondents 1 and 3.

9. The petitioner had stated that the petitioner has been running a retail outlet of Hindustan Petroleum Corporation in D.No.12-1-33, Jawahar Street, Salipet, Kakinada. The petitioner has been running the said outlet in accordance with the rules after obtaining necessary permission from various authorities without violating any orders or regulations as contemplated under various statutes. The petitioner is commanding good reputation from among its public for its ethical business operations being conducted for the last four decades. It is also stated the 4th respondent made an application to the 5th respondent for grant of retail outlet in D.No. 12-9-4, Jawahar Street, Kakinada in an extent of 1386 sq. mtrs. and in the site belonging to one Vungarala Lakshminarasamma. It appears that on receipt of such application from the 4th respondent, the 5th respondent made application to the respondents 1 to 3 for grant of ''No objection certificate'' that are mandatory under the statute particularly under the Hyderabad Municipal Corporation Act. Neither the 4th nor the 5th respondent can start a new retail outlet unless the permissions are obtained from the respondents 1 to 3. It is also further stated that on coming to know about the said information, the petitioner immediately made a representation to the 1st respondent on 13-9-2006 raising their objections for starting the new retail outlet by the 5th respondent requesting him not to grant No Objection Certificate in favour of the 4th respondent stating that the proposed outlet is at a distance of less than 150 feet which is contrary to the Hyderabad Municipal Corporation Building Bye-Laws 1981 under which as per condition under 32(I)(II) & (III):

No new pump shall be permitted within a distance of 182.88 meters from an existing pump measured along the road on which it abuts. The Commissioner, may relax this distance depending upon the circumstances.

No new pump shall be permitted on a site measuring less than 1672.20 sq. meters.

It is also further stated that the respondents 4 and 5 proposed to start a retail outlet in a site which is less than 150 feet which is admeasuring 1386 sq. meters and the distance between the petitioner''s outlet and the proposed outlet is less than 150 feet and as such the granting of ''No Objection Certificate'' does not arise as the proposal of starting new retail outlet is in contravention of both the conditions as contemplated under Condition No. 32 of Bye-Laws. It is also further stated that besides this, the road on which the respondents 4 and 5 propose to start a retail outlet is one way traffic road and the width of the road is only 80 feet and more so, there are more than five retail outlets existing in the same vicinity. The 1st respondent being the authority to grant ''No Objection Certificate'' after getting the reports from the Municipal Corporation, as there was no action on the part of the 1st respondent, the petitioner had made another representation on 18-12-2006 requesting the 1st respondent not to grant No Objection Certificate in favour of respondents 4 and 5 in the aforesaid circumstances. It is stated that the petitioner is under the bona fide impression that if the respondents consider its objections, no ''No Objection Certificate'' will be issued in favour of the respondents 4 and 5 as it violates the conditions as contemplated under the Bye-Laws. It is also further stated that while the matters stood thus to the utter surprise and dismay of the petitioner, the 4th respondent is making arrangements for starting the retail outlet in the proposed site proclaiming that the 1st respondent had already agreed to give ''No Objection Certificate'' in his favour bypassing the objections raised by the petitioner. Thereupon, the petitioner approached the office of the respondents 1 and 2 to ascertain any No Objection Certificate is given but the office of the respondents 1 and 2 refused to give any positive reply except saying that they need not give any answer to the queries raised by the petitioner. The petitioner also made frantic efforts to find out whether the objections raised by the petitioner are considered or not, for which also there was no positive answer. It is stated that the petitioner being the affected party if the new retail outlet is given in favour of respondents 4 and 5, the objections raised by the pare bound to be considered by the respondents 1 to 3 before issuance of No Objection Certificate. The petitioner reserved the right to question the action of issuance of No Objection Certificate if already issued in favour of respondents 4 and 5. It is further stated that to the knowledge of the petitioner the respondents are making hectic efforts to start a new retail outlet under the guise of No Objection Certificate being issued by the 1st respondent and if such a No Objection Certificate is issued, the petitioner would be badly affected and the same would be in violation of conditions under the Bye-Laws. It is further stated that all these days the petitioner kept quiet with a fond hope that the objections will be considered by the 1st respondent and no permission would be given by the respondents to enable the respondents 4 and 5 to start a new outlet, but no response is given to the representations of the petitioner till date. At any moment, the 1st respondent may give No Objection Certificate to the respondents 4 and 5, if the same had not already been given. If the No Objection Certificate is given and the respondents 4 and 5 are allowed to make preparations for starting the new outlet, it will cause hardship not only to the petitioner, but also to the respondents 4 and 5.

10. A counter affidavit is filed by the 5th respondent only and it is sworn to by the Senior Divisional Retail Sales Manager, Visakha Divisional Office, Indian Oil

Corporation Limited, Visakhapatnam. In para-2 of the counter affidavit specific objection had been taken that the Courts of Law have been taking consistent view that a rival dealer cannot maintain a Writ Petition and hence the Writ Petition itself is not maintainable. However, it was also further averred in para-3 that without prejudice to the above contentions, the further facts to be considered. It was also stated that the Indian Oil Corporation Limited obtained a plot opposite to the petitioner''s existing outlet across the road admeasuring approximately 1350 sq. meters equivalent to 1615 sq. yards with a frontage of 30.4 meters on lease for the purpose of establishing an ''A'' site Retail Outlet. The necessary No Objection Certificate for establishing this outlet was obtained under Rule 144 of the Petroleum Rules 2002, vide proceedings in D.Dis.C4/ M/560/2006, dated 26-9-2006 from the District Revenue Officer-cum- Additional District Magistrate, East Godavari. It was also further stated that the petitioner sought to place reliance upon the Municipal Corporation Building Bye-Laws 1981 issued under G.O.Ms.No.905, Housing Administration and Urban Development (MA) dated 7-8-1981 which apply to the Municipal Corporation of Hyderabad. Unless the said Bye-Laws are separately adopted by the Kakinada Municipal Corporation, the same are not automatically applicable to Kakinada. There is no evidence of such adoption and in the absence thereof, the petitioner cannot seek to rely upon the same. The petitioner is therefore put to proof of the applicability of the said Bye-Laws to Kakinada. It was also further stated that subject to the applicability of the Bye-Laws, the petitioner places reliance upon Bye-Law Nos.3(1)(ii) which states to the effect that no new pump measured along the road on which it abuts. Even if the Bye-Laws are applicable to Kakinada, the above Bye-Law only applies to a new pump which is to be established abutting an existing pump along the same road and obviously has no application to the facts of the present case where the proposed retail outlet of the Indian Oil Corporation Limited is not on the same side of the road on which the petitioner''s existing retail outlet is situate but is opposite the same across the road and therefore the reliance placed on the said Bye-Law by the petitioner is utterly misconceived. It was further stated that the Indian Oil Corporation Limited does not have any retail outlets in the vicinity of the petitioner''s existing outlet and the subject location was identified after conducting a survey and assessment of the market potential. The petitioner''s apprehension appears to be that the advent of a new outlet would break the monopoly enjoyed in this area by the petitioner and the outlet of the Reliance Company. This cannot be a valid consideration to weigh with the authorities or the Court for stalling the establishment of the proposed retail outlet. It is also further stated that the Competent Authority under the Petroleum Rules consults various other authorities such as Revenue Officials, Police Officials, Health Officials, Fire authorities and the Roads and Buildings Department before granting the No Objection Certificate. The petitioner cannot therefore lightly presume that the No Objection Certificate in the present case had been issued without proper application of mind by all the authorities concerned. It was also further stated that after obtaining the requisite ''No Objection Certificate'' under the Petroleum

Rules, the Indian Oil Corporation Limited placed the work order on 28-3-2007 for construction of the necessary infrastructure for the retail outlet on the subject site and the site was handed over for commencement of the work on 14-5-2007. However, in view of the orders passed by this Court on 18-5-2007, the further construction activity was stopped making the site a potential safety hazard in view of the open pits dug and left unfilled after tank installation and the pits dug for foundations for the wall and the building. The risk is enhanced all the more so in view of the impending monsoon and it is in public interest that these works are permitted to be completed expeditiously. The bona fides of the petitioner are manifestly suspect inasmuch as it is a business rival solely interested in perpetuating its own profit and monopoly in the market and cannot be permitted to assail the ''No Objection Certificate'' obtained as per norms or the consequent efforts to establish the retail outlet and such an endeavour on the part of the petitioner being a business rival cannot be countenanced by this Court.

11. In the light of the respective stands taken by the parties, now it may have to be considered whether in the light of the facts and circumstances, the Writ Petition can be maintained by the writ petitioner.

12. The learned Standing Counsel representing the 5th respondent Sri P.V. Sanjay Kumar placed strong reliance on the decision of a Four Judge Bench of the Apex Court in Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, wherein at paras 50 and 51 it was observed:

The instant case falls well nigh within the ratio of this Court''s decision in The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others, , wherein it was held that a rice mill owner has no locus standi to challenge under Article 226, the setting up of a new rice mill by another - even if such setting up be in contravention of Section 8(3)(c) of the Rice Milling Industry (Regulation) Act, 1958 - because no right vested in such an applicant is infringed.

For all the foregoing reasons, we are of the opinion that the appellant had no locus standi to invoke this special jurisdiction under Article 226 of the Constitution. Accordingly, we answer the question posed at the commencement of this judgment, in the negative and on that ground, without entering upon the merits of the case, dismiss this appeal with costs.

Reliance also was placed on the decision of the Apex Court in The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others, wherein a Three Judge Bench of the Apex Court observed at paras 9 and 10 as hereunder:

The Parliament has by the Rice Milling Industry (Regulation) Act, 1958, prescribed limitations that an existing rice mill shall carry on business only after obtaining a licence and if the rice mill is to be shifted from its existing location, previous permission of the Central Government shall be obtained. Permission for shifting their rice mill was obtained by the appellants from the Director of Food &Civil Supplies. The appellants had not started rice milling operations before the sanction of the Director of Food & Civil Supplies was obtained. Even if it be assumed that the previous sanction has to be obtained from the authorities before the machinery is moved from its existing site, we fail to appreciate what grievance the respondents may raise against the grant of permission by the authority permitting the installation of machinery on a new site. The right to carry on business being a fundamental right under Article 19(1)(g) of the Constitution, its exercise is subject only to the restrictions imposed by law in the interests of the general public under Article 19(6)(i).

Section 8(3)(c) is merely regulatory: if it is not complied with, the appellants may probably be exposed to a penalty, but a competitor in the business cannot seek to prevent the appellants from exercising their right to carry on business, because of the default, nor can the rice mill of the appellants be regarded as a new rice mill. Competition in the trade or business may be subject to such restrictions as are permissible and are imposed by the State by a law enacted in the interests of the general public under Article 19(6), but a person cannot claim independently of such restriction that another person shall not carry on business or trade so as to affect his trade or business adversely. The appellants complied with the statutory requirements for carrying on rice milling operations in the building on the new site. Even assuming that no previous permission was obtained, the respondents would have no locus standi for challenging the grant of the permission, because no right vested in the respondents was infringed.

Reliance also was placed on the undernoted decisions of this Court : R. Malla Reddy Vs. Government of Andhra Pradesh and Others, , Vijaya Sagar Filling Station v. IBPCO Ltd and Ors. W.P. No. 3800 of 2004, dt.16-3-2004, Padmavathi Filling Station v. The Indian Oil Corporation Ltd. W.P. No. 5959 of 1998, dt.22-12-2000 and Rajappa Kawati Vs. G. Hanumantha Rao and Others, .

13. However, Sri Challa Dhanamjaya, the learned Counsel representing the writ petitioner placed strong reliance on M.S. Jayaraj Vs. Commissioner of Excise, Kerala and Others, and also yet another decision in Sai Chalchitra v. Commissioner, Meerut Mandal and Ors. (2005) SU 3 S.C.C. 683. The Counsel also pointed out to the relevant paras 12 and 14 of the decision (7) supra which read as hereunder:

In this context we noticed that this Court has changed from the earlier strict interpretation regarding locus standi as adopted in The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others, and Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, and a much wider canvass has been adopted in later years regarding a person''s entitlement to move the High Court involving writ jurisdiction. A four-Judge Bench in Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, , pointed out three categories of persons vis--vis the locus standi (1) a person aggrieved; (2) a stranger; and (3) a busybody or a meddlesome interloper. Learned Judges in that decision pointed out that anyone belonging to the third category is easily distinguishable and such persons interests in things which do not concern him as he masquerades to be a crusader of justice. The judgment has cautioned that the

High Court should do well to reject the petitions of such busybody at the threshold itself. Then their Lordships observed the following:

38. The distinction between the first and second categories of applicants, though real, is not always well demarcated. The first category has, as it were, two concentric zones; a solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of ''persons aggrieved''. If the grey outer circle the bounds which separate the first category from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outer zone may not be ''persons aggrieved''....

In the light of the expanded concept of the locus standi and also in view of the finding of the Division Bench of the High Court that the order of the Excise Commissioner was passed in violation of law, we do not wish to nip the motion out solely on the ground of locus standi. If the Excise Commissioner has no authority to permit a liquor shop owner to move out of the range (for which auction was held) and have his business in another range it would be improper to allow such an order to remain alive and operative on the sole ground that the person who filed the Writ Petition has strictly no locus standi. So we proceed to consider the contentions on merits."

It was also contended that the decision of the Four Judge Bench referred (1) supra of the Apex Court also had been considered in the said decision. Further, the Counsel also while relying upon the decision (8) supra submitted that when maintainability of the Writ Petition was decided on such a question by the High Court, the Apex Court while expressing a definite opinion relating to the same set aside the impugned order and remanded the matter back to the High Court for fresh decision in accordance with Law.

14. It is no doubt true that in the decisions referred (7) and (8) supra, on the aspect of locus standi, a different view had been expressed. It is needless to say that when a binding decision of the Apex Court of a larger Bench is available, the same is binding on this Court. Apart from this aspect of the matter, in the light of the several decisions in this regard referred to supra, this Court had been taking a consistent view in the light of the binding precedents of the Apex Court. It is needless to say that the decision of the Apex Court referred (7) supra is of a Two Judge Bench and though the prior decision of the larger Bench had been referred to, by that itself it cannot be said that the decision of the larger Bench is not a binding precedent. It may be on a particular set of facts the learned Judges could have expressed some opinion. Apart from this aspect of the matter, as far as the decision referred (8) supra is concerned, no binding precedent as such had been referred to while remanding the matter back and hence the said view cannot be followed in the light of the view expressed by the Apex Court both in the Four Judge Bench and the Three Judge Bench already referred (1) and (2) supra.

15. The concept of locus standi in maintaining a Writ Petition no doubt had been well liberalized and the horizon also is well expanded in the recent times, but this liberality cannot be stretched too far. May be in the interest of public, the grievances may be ventilated by way of Public Interest Litigation, but this cannot be equated with a private individual ventilating such grievances and litigating a particular litigation in his own interest.

16. Viewed from any angle, this Court is of the considered opinion that in the facts and circumstances, the Writ Petition is not maintainable at the instance of a rival dealer or rival trader, as the case may be, and hence the Writ Petition being devoid of merit, the same shall stand dismissed at the stage of admission. No costs.

