

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

Writ Petition No.39260 of 2012

Dated 18.06.2015

Between:

Pemmaraju Nagaraju

... Petitioner

and

The Joint Collector,
Guntur District and 2 others.

...Respondents

**Counsel for the petitioner: Mr.K.Srinivas for Mr.P.Kasi
Nageswara Rao**

Counsel for respondents 1 & 2: AGP for Civil Supplies (AP)

Counsel for respondent No.3: Mr.T.Rajendra Prasad

The Court made the following:

Order:

This Writ Petition is filed for a Mandamus to declare the action of respondent No.2, in appointing respondent No.3 as the fair price shop dealer of Shop No.4 of Kornepadu Village, Vatticherukuru Mandal, Guntur District, as illegal and arbitrary.

The mother of the petitioner was the permanent fair

price shop dealer of the above mentioned shop. Consequent on her death on 14-08-2012, a permanent vacancy arose in respect of the said shop. On 27-08-2012, the petitioner has applied for his appointment on compassionate grounds. However, pending the said application, respondent No.2 has issued notification on 09-10-2012 reserving the said vacancy for the candidates belonging to the Physically Handicapped Category (PHC). The petitioner claimed that he has filed an appeal against the said notification, in so far as it has reserved the vacancy for PHC is concerned, before the Joint Collector, but he has failed to secure any interim order of stay of the selection process. As a result of the same, respondent No.2 went ahead with the selection process and selected and appointed respondent No.3 as the fair price shop dealer. Feeling aggrieved by the selection and appointment of respondent No.3, the petitioner filed this Writ Petition.

The petitioner mounted challenge to respondent No.3's appointment mainly on the ground that the same is in violation of Paragraph 2 of Annexure to G.O.Ms.No.4, CA.F & CS (CS.I)

Department, dated 19-02-2011. It is the pleaded case of the petitioner that out of the five persons, who were called for interview, respondent No.3 and another person have failed to secure the minimum prescribed marks viz., 20 marks in the written test and that therefore, the selection and appointment of respondent No.3 is contrary to the said GO.

At the hearing, Mr.T.Rajendra Prasad, learned Counsel for respondent No.3, has sought to justify the appointment of respondent No.3. He has submitted that as the petitioner has not applied for appointment as fair price shop dealer in pursuance of the impugned notification, he has no locus to question the appointment of respondent No.3.

I have considered the respective submissions of the learned Counsel for the parties and perused the record.

The Government has prescribed guidelines for selection and appointment of Fair Price Shop dealers in G.O.Ms.No.4, dated 19-02-2011. Paragraph 2 of the said GO, to the extent it is relevant, reads as under:

“The Appointing authority shall conduct a written test generally on the existing PDPS and the records to be maintained by the Fair Price Shop dealer to know

whether the applicant is aware of the functioning of the Public Distribution System in the State and whether he can function effectively in the implementation of the PDS and other general issues. The written examination shall be for 50 marks. After the test is conducted, the qualified candidates who score 20 and above out of 50 marks shall be called for viva voce interview on a date indicated by the A.O. The ratio between the vacancy proposed to be filled and the candidates to be invited for interview shall be 1:5. However, if the candidates qualified in the written test is less than 5, the Appointing authority may confine the ratio to the exact number of qualified candidates in the written test. If the qualified candidates in the written test are more than 5, it shall be restricted to 5 only based on the marks from highest in the descending order.” (Emphasis added)

A perusal of the impugned order of respondent No.2 itself would show that out of the five persons, who were called for interview, the candidate at Serial No.4 viz., Matluri Venkatappaiah and the candidate at Serial No.5 i.e., respondent No.3 herein have secured only 17½ and 16½ marks respectively, while the candidates at Serial Nos.1 to 3 have secured 22½, 21½ marks and 21 marks respectively.

From these admitted facts, it is quite evident that respondent No.3 failed to secure the minimum of 20 marks in the written test. Indeed, he is the one, who has secured the lowest marks in the written test of all other four candidates. Therefore, it passes one's comprehension as to how respondent No.2 thought of calling respondent No.3 for interview, though he has failed to secure the minimum prescribed marks in the written test. *Ex facie*, the action of respondent No.2 in considering respondent No.3 and selecting and appointing him as the fair price shop dealer is patently contrary to G.O.Ms.No.4, dated 19-02-2011.

As regards the submission of the learned Counsel for respondent No.3 that since the petitioner has not applied for appointment as the fair price shop dealer in pursuance of the impugned notification, he has no locus to question the appointment of respondent No.3, though, at the first blush, this argument appears to be appealing, on a deeper consideration of the same, it has no merit. Respondent No.2 has reserved the vacancy for PHC. Therefore, there was no opportunity for the petitioner to apply for appointment as the fair price

shop dealer in pursuance of the impugned notification. The petitioner appeared to have tried his best to stall the selection process by filing an appeal before the Joint Collector, but, to his misfortune, he has failed in his attempt.

Be that as it may, when a patent illegality is brought to the notice of this Court, by a person, who was also aspiring for dealership, but could not succeed in making his application, for the reason beyond his control *viz.*, reserving the vacancy for PHC, this Court cannot turn its eyes off such patently illegal and arbitrary action.

The learned Counsel for the petitioner submitted that during the pendency of this Writ Petition, the Government has issued G.O.Ms.No.4, dated 28-02-2014, providing for appointment of one of the family members of the deceased permanent fair price shop dealer on compassionate grounds. Since no other qualified person has questioned the appointment of respondent No.3, and the petitioner has been seeking appointment in place of his deceased mother, a permanent dealer till her death, he will get a chance for consideration of his case in the event the appointment of respondent No.3 is set

aside. In this view of the matter, I am of the opinion that the appointment of respondent No.3, made in flagrant violation of G.O.Ms.No.4, dated 19-02-2011, cannot be sustained and the same is, accordingly, set aside.

Considering the fact that no eligible candidate among Serial Nos.1 to 3 shown in the impugned order belonging to PHC has questioned the appointment of respondent No.3, I do not feel inclined to reconsider their cases for appointment.

As the petitioner has been persistently pursuing his cause and during the pendency of this case, G.O.Ms.No.4, dated 28.02.2014, was issued providing for compassionate appointment, elements of law and equity warrant that his case is considered. Accordingly, respondent No.2 is directed to consider the petitioner's claim for appointment on compassionate ground under G.O.Ms.No.4, dated 28-02-2014. If the petitioner satisfies the requirements of the said GO, respondent No.2 shall appoint him as the permanent fair price shop dealer and reserve another shop for PHC. In a converse situation, respondent No.2 shall issue a fresh notification

once again reserving the shop for PHC and conduct selection afresh. Respondent No.2 shall complete this exercise within two months from the date of receipt of this order.

The Writ Petition is, accordingly, allowed to the extent indicated above.

As a sequel to disposal of the Writ Petition, interim order, dated 24-12-2012, is vacated and WVMP.No.1461 of 2013 in/& WPMP.No.49848 of 2012 are disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

Dt: 18th June, 2015
LUR