

***THE HONOURABLE SRI JUSTICE C.V.NAGARJUNA REDDY**

-

+WRIT PETITION No.29894 of 2011

-

%Dated 11-06-2015

M.V.Krishnaiah

.... Petitioner

VERSUS

\$ The Controller of Legal Metrology,
Government of Andhra Pradesh,
Hyderabad
and 2 others.

... Respondents

! Counsel for Petitioner: Mr. P.Sridhar Reddy

^Counsel for Respondents: AGP for Civil Supplies (A.P)

<GIST:

>HEAD NOTE:

? CITATIONS:

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.29894 of 2011

-
Dated: 11.06.2015

Between:

M.V. Krishnaiah.

.. Petitioner

And

The Controller of Legal Metrology,
Government of Andhra Pradesh,
Hyderabad
and 2 others.

.. Respondents

Counsel for the Petitioner : Mr. P.Sridhar Reddy.

Counsel for the Respondents : AGP for Civil Supplies (A.P)

The Court made the following:

-
-

-
-
-

ORDER:

This writ petition is filed for a Mandamus to declare Circular Memo No.3255/L2/2011, dated 26.08.2011, of respondent No.1 and consequential Circular Memo No.1857/B/11, dated 12.09.2011, of respondent No.3 as illegal and without jurisdiction. The petitioner has sought for a direction to the respondents to renew his repairer licence without insisting for deletion of the word "Corporation" from the name of his business establishment.

I have heard Mr. P.Sridhar Reddy, learned counsel for the petitioner, and the learned Government Pleader for Civil Supplies (A.P).

The petitioner averred that he is a skilled worker authorized to repair heavy and light weights and measures having passed skill workers test. That he has started an establishment in the name and style "Venkateswara Weighing Machine Corporation" in the year 1969 and been running the same by obtaining repairer's licence under the provisions of the Standards of Weights and Measures Act, 1976 and under the Legal Metrology Act, 2009 (for short 'the Act'), after the former Act was repealed. The petitioner feels aggrieved by the two impugned proceedings issued by respondent Nos.1 and 3 respectively, whereunder he was directed to remove the word "Corporation" from the name of his business establishment. According to the petitioner, respondent No.1, which is a licensing authority, is not empowered to prescribe any condition other than the conditions prescribed under schedule III of the A.P. Legal Metrology (Enforcement) Rules, 2011 (for short 'the Rules').

On behalf of the respondents, respondent No.2 has filed a counter affidavit, whereunder he has sought to justify the impugned proceeding issued by respondent No.1 based on Section 23 (2) of the Act.

At the hearing, Sri P.Sridhar Reddy, learned counsel for the petitioner, submitted that the subject "legal metrology" was initially under the state list, that by the 42nd amendment, the said subject has been

deleted from the state list and included in the concurrent list and that in pursuance thereof, the Government of India has enacted the Act. That Section 23 of the Act prohibits manufacture, repair or sale of weight or measure without licence and under sub-section (2) thereof and that the Controller shall issue licence in such form and manner, on such conditions, for such period and such area of jurisdiction and on payment of such fee as may be prescribed. The learned counsel further submitted that under Section 53 (1) of the Act, the State Governments are empowered to make rules for the purpose of carrying out the provisions of the Act, and sub-section (2) thereof enumerates the matters with reference to such rules can be made. That clause (c) of sub-section (2) thereof pertains to making rules with regard to the form, manner, conditions, period, area of jurisdiction and fees for issuance of licence under sub-section (2) of Section 23 of the Act. The learned counsel has invited this Court's attention to Rule 11 of the Rules. Sub-rule (3) thereof provides that every licence issued to a manufacturer, repairer or dealer shall be in the appropriate form set out in schedule III. He has also referred to and relied upon the conditions of licence mentioned in schedule III of the Rules.

The learned Assistant Government Pleader placed reliance on Section 23 (2) of the Act and submitted that the Controller is empowered to prescribe such conditions as he deems fit while granting licence.

I have carefully considered the respective submissions of the learned counsel for the parties.

For appreciation of the respective submissions, certain statutory provisions need to be noticed. Section 23 of the Act reads as under:

“Prohibition on manufacture, repair or sale of weight or measure without licence:-- (1) No person shall manufacture, repair or sell, or offer, expose or

possess for repair or sale, any weight or measure unless he holds a licence issued by the Controller under sub-section (2):

Provided that no licence to repair shall be required by a manufacturer for repair of his own weight or measure in a State other than the State of manufacture of the same.

(2) For the purpose of sub-section (1), the Controller shall issue a licence in such form and manner, on such conditions, for such period and such area of jurisdiction and on payment of such fee as may be prescribed.”

Section 53 of the Act reads as follows:

“Power of State Government to make rules:-- (1) The State Government may, by notification, and after consultation with the Central Government, make rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

- (a) the time within which the weight or measure may be got verified under proviso to sub-section (1) of section 16;
- (b) registers and records to be maintained by persons referred to under sub-section (1) of section 17;
- (c) the form, manner, conditions, period, area of jurisdiction and fees for issuance of licence under sub-section (2) of section 23;
- (d) fee for verification and stamping of any weight or measure under sub-section (1) of section 24;
- (e) manner of notifying Government Approved Test Centre, terms and conditions and fee to be paid under sub-section (3) of section 24;
- (f) fee for compounding of offences under sub-section (1) of section 48.

(3) In making any rule under this section, the State Government may provide that a breach thereof shall be punishable with fine which may extend to five thousand rupees.

(4) The power to make rules under this section shall be subject to the condition of the rules being made after previous publication in Official Gazette.

(5) Every rule made under this section shall, as soon as may be after it is made, be laid before each House of State Legislature, where there are two Houses and where there is one House of State Legislature, before that House.”

Rule 11 of the Rules reads thus:

“Licensing of manufacturers, repairers and dealers of Weights and Measures:-- (1) Every manufacturer or repairer of, or dealer in, weight or measure shall make an application for issue of a licence, to the Controller of Legal Metrology or such other officers as may be authorized by him in this behalf, in the appropriate form set out in Schedule II-A.

Provided that no licence to repair shall be required by a manufacturer to repair weight or measure manufactured by him and used in a state other than the state of manufacture of the same, but the manufacturer as well as the user has to inform in advance the concerned Legal Metrology Officer about the repairing.

Provided further that no person will be granted a repairing licence unless he is a skilled worker and having a valid Certificate of Skill issued by the Controller, Legal Metrology.

(2) Every manufacturer or repairer of or dealer in, weight or measure shall make an application for the renewal of a licence within thirty days before the expiry of validity of the licence to the Controller of Legal Metrology or such other officers as may be authorized by him in this behalf, in the appropriate form set out in Schedule II-B.

(3) Every licence issued to a manufacturer, repairer or dealer shall be in the appropriate form set out in Schedule III.

(4) Every licence issued to a manufacturer, repairer, or dealer shall be valid for a period of one calendar year and may be renewed from one calendar year to another calendar year by the Controller or such other Legal Metrology Officer as may be authorized by him in this behalf on payment of such fee as specified in the Schedule IV.

(5) The fee payable for the alteration of a licence or for the issue of a duplicate licence shall be as specified in the Schedule IV.

Provided that an additional fee at full the rates specified in the Schedule IV shall be payable by the applicant if he is permitted by the Controller to make an application for the renewal of a licence within a period of three months from the date of expiry of the licence.

(6) The Controller or such other officer as may be authorized by him in this behalf shall maintain a register of licenced manufacturers, dealers and repairers in the form set out in Schedule V.

(7) Every manufacture / repairer / dealer licenced for the jurisdiction to which licence is granted under the Act and these rules, shall maintain such workshop / laboratory / equipments / tools / registers etc. as the case may be, and such other terms and conditions specified by the Controller of Legal Metrology. Any general or special directions and such licence conditions issued by the Controller, shall be binding on the persons to whom the licence has been granted.

(8) Every licensee under the Act and these rules shall furnish a security deposit for each licence to the State Government as specified in Schedule VI.

(9) Every licence issued or renewed under the Act and these rules shall be displayed in a conspicuous place in the premises where the licensee carries on business.

(10) A Licence issued or renewed under the Act / Rules made there under shall not be saleable or otherwise transferable.

(11) Transfer or transmission of business: (1) Where the business of a person licenced under the Act and the Rules is transmitted by succession, intestate or testamentary, the heir or legatee, as the case may be, of such person shall not carry on the business of such licensee either in his own name or in any other name, unless the heir or legatee has, before the expiry of sixty days after the date of such transmission, made to the Controller an application for the issue of a licence in accordance with the provisions of the Act and Rules there under:

Provided that nothing in this rule shall be deemed to prohibit the heir or legatee from carrying on business as

such licensee for the aforesaid period of sixty days, and, if he has applied for such licence, until he is granted the licence or is, by a notice in writing informed by the Controller that such licence cannot be granted to him.

(2) Where the business of any person licenced under this Act is transferred by sale, gift, lease or otherwise, the transferee or lessee, as the case may be, shall not carry on such business either in his own name or in any other name, unless he has obtained a licence to carry on such business.”

The conditions of licence in Form LR-3, pertaining to licence to repair weights, measures, weighing instruments or measuring instruments, of Schedule III of the Rules read as under:

“1. The person in whose favour this licence is issued shall.

- (a) Comply with all the relevant provisions of the Act and Rules for the time being in force;
- (b) Not encourage or countenance any infringement of the provisions of the Act or the Rules amended from time to time.
- (c) Exhibit this licence in some conspicuous part of the premises to which it relates;
- (d) Comply with any general or special directions that may be given by the Controller of Legal Metrology;
- (e) Surrender the licence in the event of closure of business or suspension or cancellation of Licence;
- (f) (i) Present the weights, measures, weighing or measuring instruments as the case may be duly repaired to the Legal Metrology Officer in whose jurisdiction it is put into use, before delivery to the user.
(ii) In the case of weights, measures weighing or measuring instruments, if they are serviced/repaired before the date on which the verification falls due and where, in the process and the verification stamp of the Legal Metrology Officer is defaced, removed or broken, they shall be presented duly repaired to the legal metrology officer for re-verification and stamping before delivery to the user.
- (g) Submit the application for renewal of this licence, as required under the rules before at least thirty days of the date of expiry of the validity of the licence.

(h) the licence conditions (a) and (d) are equally binding on all persons connected with licensee.

2. Every condition prescribed after the issue of this licence shall be binding on the persons to whom the licence has been granted.”

From the statutory provisions referred to above, it is absolutely clear that the Controller is the authority vested with the power of granting licences. Under sub-section (2) of Section 23 of the Act, such licence shall be issued in such form and manner, on such conditions, for such period and such area of jurisdiction and on payment of such fee as may be prescribed. Therefore, the question arises as to who is empowered to prescribe the matters, which are mentioned in sub-section (2) of Section 23 of the Act. Section 53 (2) of the Act empowers the State Government to provide for various aspects while making rules. Those aspects include any or all of those which are mentioned in sub-section (2) of Section 23 of the Act. All those aspects have been repeated in clause (c) of sub-section (2) of Section 53 of the Act. In exercise of Rule making power, the State of Andhra Pradesh has framed the Andhra Pradesh Legal Metrology (Enforcement) Rules, 2011. Rule 11 (3) of the Rules provides that every licence issued to a manufacturer, repairer or dealer shall be in appropriate form set out in schedule III of the Rules. Schedule III of the Rules contains the conditions of licence enumerated as (a) to (h) of condition No.1.

A conjoint reading of these provisions makes it abundantly clear that it is only the State Government which is empowered to prescribe conditions for grant of licence by framing Rules and respondent No.1 is only empowered to issue licence subject to such conditions as prescribed by the State Government. No provision under the Act or the Rules is brought to the notice of this Court under which this power of the State Government is delegated to respondent No.1. In the absence of such delegation, respondent No.1 has no power or jurisdiction to impose any condition other than the one, which is prescribed under Schedule III

to the Rules. At best, respondent No.1 can only request the State Government to appropriately amend the Rules and the Schedule for deletion of the word "Corporation" from the name of the business establishments of the licencees.

For the above-mentioned reasons, the impugned proceedings issued by respondent Nos.1 and 3 are held as wholly without jurisdiction and they are accordingly quashed.

The writ petition is accordingly allowed. As a sequel to the allowing of the writ petition, interim order dated 10.11.2011 in WPMP.No.37049 of 2011 is vacated and WPMP.No.37049 of 2011 and WVMP.No.4764 of 2011 stand disposed of as infructuous.

JUSTICE C.V. NAGARJUNA REDDY

11th June, 2015

Note: L.R.Copies to be marked.

B/o

v v