* **THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**

+ **WRIT PETITION No.6241 of 2008**

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%14.10.2015

Ande Koteswara Rao ….Petitioner

Vs.

$ The Director of Civil Supplies, Hyderabad and others

…. Respondents

! Counsel for the petitioner: Mr.V.Sudhakar Reddy

Counsel for the respondents: Assistant Government Pleader
for Civil Supplies (AP)

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WRIT PETITION No.6241 of 2008

14.10.2015

Between:

Ande Koteswara Rao

.. Petitioner

and

The Director of Civil Supplies, Hyderabad and others

.. Respondents

Counsel for the petitioner: Mr.V.Sudhakar Reddy

Counsel for the respondents: Assistant Government Pleader for Civil Supplies (AP)

The Court made the following:

ORDER:

The petitioner is the fair price shop dealer of Makthapuram Village (consisting of Makthapuram and Girijanawada), Sangam Mandal, Nellore District. The total number of cards allotted to the petitioner is 471, out of which 436 were white cards and 35 were pink cards. The petitioner specifically pleaded that out the said 436 white cards, 20 cards pertain to the residents of Girijanawada, which according to him is situated at a distance of two furlongs from Makthapuram Village. As a new shop was created by bifurcating the existing shop, the petitioner filed W.P.No.11121 of 2007. This Court, by interim order, dated 30.05.2007, in W.P.M.P.No.13890 of 2007, suspended the bifurcation order, dated 16.03.2007, passed by respondent No.2. However, the said writ petition along with a batch of other writ petitions was disposed of by this Court, by common order, dated 04.10.2007, on the short ground that under G.O.Ms.No.25, dated 18.03.1998, the petitioner has a remedy of appeal. Accordingly, the petitioner has filed an appeal before respondent No.1, who by order, dated 05.01.2008, dismissed the same. Feeling aggrieved by the said order, the unsuccessful appellant (petitioner) filed this writ petition.

The main ground of challenge to the order of bifurcation is founded on memo, dated 22.01.1999, issued by the erstwhile Government of Andhra Pradesh. A perusal of the said G.O. shows that the Government issued memo, dated 26.07.1991, laying specific guidelines for bifurcation of the exiting fair price shops in order to ensure economic viability and despite those instructions, new fair price shops are being opened even for a few cards rendering both the new shop and the bifurcated shop economically unviable. To obviate this unhealthy trend, the Government issued additional guidelines through the aforesaid memo, dated 22.01.1999, which reads as under:

> "i) In rural areas no new fair price shop should be sanctioned if the number of cards to be attached to the Fair Price Shop is less than 350.
>
> ii) In urban areas no new Fair Price Shop shall be sanctioned if the number of cards to be attached to the Fair Price Shop is less than 500.
>
> iii) In city areas no new Fair Price Shop shall be sanctioned if the number of cards to be attached to the shop is less than 800."

It is further envisaged as under:

> "If, for special reasons like dissidence or faction in a village or certain social tensions between one community and another due to caste or religious conflicts, the Collectors may if they are fully satisfied for splitting the shops for the benefit of the community, may do so giving reasons for such sanction of new shops.
>
> Similarly, where the total number of cards in a village is less than 350, a shop may be continued/sanctioned. Attaching of cards of one village to a shop in another village should be avoided."

It is an admitted fact that the petitioner's shop had only 436 white cards and that no commodities will be issued for pink cards.

The bifurcation order, dated 16.03.2007, reveals that 218 white cards each for the existing shop held by the petitioner and the newly created shop have been allotted. This is in utter violation of the aforementioned Government memo, dated 22.01.1999. From the relevant contents of the said memo mentioned supra, it is clear that the necessity for issuing the said memo arose as some Collectors were resorting to bifurcation of shops indiscriminately without keeping in view the viability norms. In order to avoid such acts of indiscriminate bifurcations, the Government has chosen to issue the said memo by prescribing 350 cards in rural areas as minimum number of cards to ensure viability of the fair price shops. The only exception carved out in this respect was the existence of special reasons like dissidence or faction in a village or certain social tensions between one community and another due to caste or religious conflicts. Though the previous Government memo, dated 26.07.1991, prescribed one kilometer distance between two fair price shops as the norm, the later memo, dated 22.07.1999, has not reiterated the same.

There is a serious dispute regarding the actual distance between Makthapuram and Girijanawada. The petitioner has produced distance certificate issued by the Mandal Revenue Inspector before the appellate authority, as per which the distance between Makthapuram and Girijanawada was approximately two furlongs. However, as per the Tahsildar's report, the distance was two kilometers. Respondent No.1 has, however, failed to resolve this dispute. Be that as it may, in my opinion, the existing fair price shop cannot be bifurcated so as to seriously affect the viability norms unless under certain exceptional circumstances. Though respondent No.1 has relied upon certain judgments of this Court, in my opinion, the observations made therein are taken out of context. In a case where there is marginal shortfall in the number of cards, a dealer cannot be allowed to insist that the prescribed number must be adhered to. However, in a case where the shortage in minimum prescribed cards is huge, rendering the shop economically unviable, it is wholly undesirable to resort to bifurcation, for unviable shops will invariably encourage malpractices by the dealers as no dealer is expected to run a shop by incurring losses and in order to make good such losses, the dealers will be forced to resort to the acts of misfeasance and malfeasance. This would derail the whole public distribution system defeating the very objective of making available the essential commodities at concessionnal rates to the people living below poverty line, who are the intended beneficiaries under the public distribution system.

The learned counsel for the petitioner has pointed out a serious anomaly from the consequential notification issued by respondent No.2 that the proposed shop is reserved for backward caste candidates. He has submitted that the backward caste candidate is not expected to be the resident of Girijanawada and that even if a new shop is created by appointing a person from this category, he cannot run the shop at Girijanawada, as a result of which the very object for which the shop is created *viz.*, to avoid the purported hardship being caused to the schedule tribe cardholders on account of commuting the alleged distance of two kilometers is defeated. At any rate, in my opinion, the facts of the case do not justify creation of a new shop as the petitioner's fair price shop will be rendered completely unviable by such creation and the same is in blatant violation of the abovementioned Government memo, dated 22.01.1999.

For the aforementioned reasons, the impugned proceedings, dated 05.01.2008, of respondent No.1 are set aside and the Writ Petition is allowed as prayed for.

C.V.NAGARJUNA REDDY, J

14th October, 2015

Note: L.R. copies to be marked.

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