

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION Nos.12949, 14658, 14910, 14917, 14921 & 14922 of 20

COMMON ORDER:

Heard the learned Counsel for the petitioners and the learned Government Pleader for the respondents.

In all these Writ Petitions, the notification issued for appointment of fair price shop dealers on 11.04.2015 by the Revenue Divisional Officer, Kurnool Division, Kurnool, is challenged as being contrary to G.O.Ms.No.4, Consumer Affairs, Food and Civil Supplies (CS.I) Department, dated 19.02.2011, and the decision of this Court in **M.Rajitha v. Revenue Divisional Officer, Warangal Town and District**^[1].

The Andhra Pradesh Scheduled Commodities (Regulation of Distribution by Card System) Order, 1973, was issued in exercise of powers conferred under the provisions of the Essential Commodities Act. The said order was replaced by another Order of 2001. On the basis of the draft guidelines sent by the Commissioner, Civil Supplies, vide his letter dated 07.02.2003, the Government issued G.O.Ms.No.53, Consumer Affairs, Food and Civil Supplies (CS.I) Department, dated 06.10.2003, indicating the guidelines for appointment of the fair price shop dealers. However, the same was replaced by G.O.Ms.No.52, Consumer Affairs, Food and Civil Supplies (CS.I) Department dated 18.12.2008, when another Control Order of 2008 was issued. G.O.Ms.No.52, dated 18.12.2008 was again superseded by G.O.Ms.No.4, dated 19.02.2011 which is in vogue as on today. It deals with the notification of vacancies of fair price shops, procedure for selection of candidates, verification of antecedents, eligibility, minimum general educational qualifications, age limit, reservations, residence, preference and priorities, guidelines to be observed in tribal areas, bank

finance & recovery and other matters. In the present batch of cases, the main issue is with regard to the observance of rule of reservation. The said guidelines provide reservation as follows:

“7. Reservations:-

7.1 The following reservation shall be observed while making appointments:

Scheduled Castes	:	15%
Scheduled Tribes	:	6%
Physically Handicapped	:	3%
Backward Classes	:	25%

7.2 (i) Reservation to women in allotment of F.P.Shops shall be fixed at 30%. Out of the said 30% reservation to women, 1% shall be reserved to the widows of Ex-Servicemen; and

(ii) The F.P.Shop dealers selected from women quota shall be adjusted both in the reserved category and also in open category;

7.3 The appointing authority shall maintain the percentage of reservation prescribed by the Government at divisional/circle level on overall basis of the strength of the fair price shops in the Revenue Division/Circle concerned. Reservations provided shall be followed treating the entire Revenue Division/circle as a unit.”

Though the said reservations have been in force since the issuance of G.O.Ms.No.53, dated 06.10.2003, at no point of time the method of reservation was properly observed and whenever notification was issued, the vacancies existing at that time alone were taken into consideration leading to multifarious litigation in the Courts. Even in respect of the notification impugned in the present batch of cases also, the rule of reservation, as envisaged in the Government Order, was not followed, but was calculated and notified on the basis of the vacancies existing and understanding of the officer.

A perusal of the above rule makes it clear that the reservation should be provided treating the entire Revenue Division/circle as a unit. For the purpose of making reservations, the aid of the 100 point roster

prepared by the Government in respect of services should be taken, but the same was not implemented. In those circumstances, when this Court pointed out the arbitrary method that is being followed for all these years in spite of clear guidelines in the Government Orders and the instructions issued from time to time, the learned Government Pleader, after adjournments, produced before this Court a register containing the roster points for all the vacancies available in the Revenue Division by preparing the points in an alphabetical manner-Mandal wise, which satisfied the spirit of guidelines contained in the Government Order. In the said roster points, the existing ration shop dealers who were already working are not disturbed since they have been working for several years, but the roster points against their shops were clearly indicated making the register of reservations a permanent document. However, in respect of existing vacancies, it is agreed that the notification will be issued as per the said register of roster only and there would not be any scope for arbitrariness.

At this stage, learned counsel for the petitioners seriously challenged the preparation of the said register by contending that if the existing dealers are not disturbed and notifications is made as per the number of vacancies indicated in the register according to the roster points, it would not balance the interest of various communities. But, this Court is not inclined to accept the said submission in view of the fact that such an ad hoc method is creating lot of problems and the dealers, who were appointed and continuing for several decades, cannot be disturbed by virtue of the reservation roster prepared for the first time. In view of this confusion only at no point of time the issue could be solved and cases are being disposed of on ad hoc basis. No doubt some candidates belonging to the reserved communities indicated in the register prepared now may not be belonging to that community, but they cannot be disturbed at this length of time on the ground of preparation of a new register adhering to the guidelines issued by the Government. Social

problem multiplied by the inaction of the authorities for several years needs resolution at one point of time or other. As stated above, no register was maintained earmarking the shops as per the roster points and different methods are being followed on different dates. When a permanent register of shops with earmarked roster points is prepared, it is very easy for the authorities as well as for the Courts to review the notification whenever there is a challenge. In the circumstances, the challenge made by the learned Counsel for the petitioners does not survive and is, accordingly, rejected.

Learned counsel for the petitioners relied on a Division Bench decision of this Court in **M.Sayappa v. District Judge, District Court,**

Kurnool^[2], wherein it was held as follows:

“9. On an anxious consideration of the entire issue, we are unable to concur with the submission made by the learned Counsel for the petitioners. It is trite to say that mere empanelment or selection does not confer a vested right for appointment, more so when the panel as prepared by the District Judge was not approved by the High Court on administrative side. The petitioners cannot claim to be appointed despite wrong identification of vacancies for various social groups. We are of the view that the decision taken by the Committee on the whole is reasonable and meant to remedy the situation arising out of non-maintenance of roster for a long time so as to ensure that the rule of reservation is observed in its true spirit. As and when recruitment took place, the appointments should have been made in accordance with the cycle of reservation as laid down in A.P. State and Subordinate Service Rules. It is not in dispute that the A.P. Ministerial Judicial Service Rules and the Last Grade Service Rules adopt the rules of reservation contained in the General Rules framed by the Governor under Article 309. For the first time while inviting the applications, the vacancies available for each category of social group have, no doubt been specified. The rule of reservation is thus followed afresh for this particular recruitment. In doing so, the appointing authority had overlooked the fact that roster points cannot be identified afresh for every recruitment without reference to the previous recruitment/recruitments. In order to properly identify the roster points and the vacancies to be allotted to each group on the basis of communal roster, appropriate positions have to be assigned to the staff already recruited and working. When the vacancies with reference to the roster points as prescribed in

the Rules are to be identified for the first time, the overall representation of various social groups should be legitimately kept in view, otherwise, it would lead to imbalances and inequities. Fitment of candidates already appointed and working against appropriate roster points should be a simultaneous exercise for the purpose of identifying the vacancies to be reserved for different categories of social groups for the present recruitment. True, even this exercise of fixing existing staff against roster points and thereafter identifying the roster points for the staff to be newly appointed may not yield scientific results. There may be candidates who would have retired or resigned. Nevertheless, a reasonable and pragmatic solution has to be devised in order to give effect to the principle and policy of reservation. In situations like this, where the register of communal roster was not opened earlier and the prescribed procedure was not followed, we are inclined to endorse the course of action adopted by the Committee of Hon'ble Judges. But, as already pointed out, while giving effect to the decision of the Committee, an error has been committed by juxtaposing the promoted staff also against appropriate roster points. In fact, in the resolution of the Committee of Hon'ble Judges recorded in the meeting held on 4-12-1997, there was no such direction to include promoted staff as well. But, the roster points arrived at and the group-wise vacancies identified on that basis were approved by the Committee of the High Court and implemented by the appointing authority. This has led to legitimate grievance on the part of some of the petitioners. We are therefore, inclined to rectify the mistake and give necessary relief to the eligible petitioners. In doing so, we shall be broadly guided by the principle accepted by the Committee of Hon'ble Judges that there should be no regular appointment to a non-notified vacancy subject however to one qualification. If a vacancy or more than one vacancy is notified for any particular social group and on the correct assessment of the roster points, more vacancies have to be allocated to that particular group and successful candidates are available in that group, there is no reason why they should be denied appointment against the actual vacancies available. The mistake in working out the vacancies for a particular group need not be perpetrated unless of course any prejudice results to the applicants or the candidates selected. For instance, if one SC(G) vacancy is notified, but, on the proper assessment of the vacancies in accordance with the exercise done pursuant to the Court's directions two vacancies are available for SC(G) and two qualified SC(G) candidates are available, we are of the view that both of them should be offered regular appointment notwithstanding that only one vacancy was notified for SCs. It is a different matter if no vacancy had been notified for SCs at all. In such a case, we agree with the Hon'ble Judges of the Committee that there should be no regular appointment of SC

candidate, merely because the vacancy was subsequently identified as a result of fresh assessment. In such an event, there is every possibility of prejudice in the sense that in the absence of reservation for SCs not being notified at all, the eligible candidates may not be inclined to submit their applications. But, that is not the case where the vacancies are found to be more than what were notified for a particular category. It is true, as laid down by the Supreme Court in ***P.Mahendran v. State of Karnataka*** (AIR 1990 SC 405), a candidate applying for the post pursuant to an advertisement gets a right to be considered for the post in accordance with the terms and conditions of the advertisement and the existing recruitment rules. The operation of this rule does not in any way place an embargo against the absorption of more number of successful candidates against the vacancies which are available for the particular group on the date of Notification itself though, by mistake the vacancies which were notified less. In deviating from the strict terms of the recruitment notification to this limited extent, it would not in any way cause prejudice to any applicant or candidate and there will be no denial of the Constitutional guarantee enshrined in [Article 16](#) of the Constitution. On the other hand, such a course of action would promote justice by affording employment to the eligible and successful candidates who were denied their due share of reservation by virtue of wrong identification of vacancies.”

In the said case, this Court was dealing with the filling up of posts in the subordinate judiciary and the preparation of roster register for the first time. Though the learned counsel for the petitioners relied on the above Division Bench judgment, the said decision does not support their case, but it endorses the view taken by this Court in preparing the roster register for the first time. In the said case also, this Court observed that the exercise of fixing existing staff against roster points and thereafter identifying the roster points for the staff to the newly appointed may not yield scientific results, but a reasonable and pragmatic solution has to be devised in order to give effect to the principle and policy of reservation. The same method is being adopted in the instant case also and hence the present register is in tune with the aforesaid decision of the Division Bench only. In that view of the matter, the argument advanced by the learned Counsel does not support his point of view but supports the action taken by the respondents now.

In **M.Rajitha**'s case (supra) this Court considered the allocation of percentage of marks for interview and also reservation in favour of different sub-categories of B.C community. We are not concerned with the allocation of marks in the present batch of cases. With respect to the sub-categorization among B.C candidates this Court relied on a circular bearing CCS.Ref.No.N4/4362/2011, dated 28.09.2011, issued by the Commissioner of Civil Supplies, Hyderabad, directing the Collectors (CS)/CRO, Hyderabad, to prepare the hundred point roster following the rule of reservation indicated in G.O.Ms.No.4, dated 19.02.2011. This Court ultimately fixed 20 marks for interview and 80 marks for written test. In view of the same, learned counsel for the petitioners cannot have any grievance with regard to preparation of roster.

The learned Government Pleader submits that the authorities are willing to issue a fresh notification in accordance with the register submitted to this Court, which is going to be the permanent register indicating the number of shops, and the roster points earmarked for each. She submits that the vacancies would be notified and applications would be invited from the respective communities only.

In view of the above, all the Writ Petitions are allowed setting aside the notification impugned in this batch of cases for appointment of fair price shop dealers with liberty to the respondents to issue a fresh notification as per the roster register submitted to this Court in respect of Kurnool Revenue Division. The miscellaneous petitions pending in these Writ Petitions, if any, shall stand closed. There shall be no order as to costs.

A.RAMALINGESWARA RAO, J

Date: 14.09.2015

TJMR

[\[1\]](#) 2013 (6) ALD 199

[\[2\]](#) 1999 (4) ALD 259 (DB)