

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

W.P.No.27449 of 2011

Date : 7-10-2015

Between :

A. Gangulamma ..
Petitioner

And

The District Collector,
Chittoor, Chittoor District
and others ..
Respondents

Counsel for petitioner : Mr. Suresh Kumar Reddy Kalava
Counsel for respondent Nos.1 to 4 : Assistant
Government Pleader

for Civil Supplies (AP)

Counsel for respondent No.5 : Mr. V. Surendra Reddy

The Court made the following :

ORDER:

This Writ Petition is filed for a mandamus to set-aside order dated 26-3-2008 in ROC.A3/6359/03, of respondent No.3 whereby he has appointed respondent No.5 as the fair price shop dealer of Kondakinda Harijanawada H/o. Thimmapuram village, K.V. Palle Mandal, Chittoor District.

I have heard Mr. Suresh Kumar Reddy Kalava, learned Counsel for the petitioner, learned Government Pleader for Civil Supplies (AP) and Mr. V. Surendra Reddy, learned Counsel for respondent No.5.

In pursuance of the notification issued by respondent No.3, the petitioner who is a member of the Self Help Group called Velugu Group, and respondent No.5, the Group leader of Balaji Mahila Mandali, and three others have applied for appointment as permanent dealer of the above mentioned fair price shop. By order dated 11-6-2003, respondent No.3 has selected and appointed respondent No.5, a resident of Peddakammapalle, H/o. Thimmapuram village, as the fair price shop dealer. Feeling aggrieved by the said order, the petitioner filed an

appeal. By order dated 29-10-2003, respondent No.2 allowed the said appeal by holding that respondent No.5 being the resident of a village which is 2 K.Ms. away from the village in which the shop is located, her appointment was illegal. He has accordingly remanded the matter to respondent No.3 for fresh consideration. Feeling aggrieved by the same, respondent No.5 has filed a Revision Petition before respondent No.1. While concurring with the opinion of respondent No.2 that respondent No.5 ought not to have been appointed, respondent No.1 has gone a step further and observed that it would be more appropriate to appoint the petitioner as the Group lead by her has been carrying on its activity in Harijanawada itself where the shop is situate, to enable them to give better service to the card holders rather than the dealer who is not a resident of the village. However, he has left the issue to respondent No.3 for further action while confirming the order of respondent No.2 setting aside the appointment of respondent No.5. Assailing the said order, respondent No.5 filed W.P.No.19492 of 2007.

A learned single Judge of this Court while setting aside the order of respondent No.1 only to the extent of the observation that it would have been more appropriate had the petitioner been appointed, directed respondent No.3 to proceed further in accordance with law. Thereafter, respondent No.3 has issued the impugned proceedings dated 26-3-2008 once again appointing respondent No.5

as the dealer. A perusal of this proceeding makes an interesting reading. The only reason assigned by respondent No.3 for appointing respondent No.5 is that in pursuance of the legal advice given by the Assistant Government Pleader on 18-3-2008, he has appointed respondent No.5 as the dealer.

In my opinion, respondent No.3 has committed a serious illegality in appointing respondent No.5 as the fair price shop dealer for more reasons than one. Firstly, being the appointing authority, respondent No.3 shall not seek legal advice as to who should be appointed as the dealer. Even on any issue of law if he felt that such a legal advice was necessary, he should not have solely relied upon such advice, more so, without discussing the merits and demerits of each candidate. The more important reason to invalidate the order of respondent No.3 is that both respondent No.2 in the appeal and respondent No.1 in the revision, concurrently held that respondent No.5 who is not a resident of the village in which the fair price shop is proposed to be located ought not to have been appointed and have accordingly set-aside her appointment. Further, in W.P.No.19492 of 2007, this Court has interfered with the order of respondent No.1 only to the extent of indicating that the petitioner being the resident of the village proper, it would be more appropriate to appoint the Group lead by her. For better understanding of the scope of this order, it is necessary to

quote its relevant portion hereunder :

“The District Collector, Chittoor, in D. Dis.C1/1189/ 2003, dt. 3-9-2007 observed as hereunder:-

“Hence, in the above situation it would be more appropriate to appoint Velugu group represented by Smt. Gangulamma as Fair Price Shop Dealer since their location in Kondakinda Harijanawada itself, would enable them to give better service to the Fair Price Shop cardholders rather than a dealer located far away.

Hence, the orders of the Sub-Collector, Madanapalle in appointing Balaji Mahila Mandal, represented by Smt. A. Reddamma as Fair Price Shop Dealer for Kondakinda Harijanawada is hereby set-aside.

The Sub-Collector, Madanapalle is directed to take further action in the matter.”

It is needless to say that the concerned Revenue Divisional Officer is the appointing authority and in the light of the same, that portion of the impugned order is hereby set-aside and let the Revenue Divisional Officer, Madanapalle Division, further proceed with the matter in accordance with law, within a period of six weeks from the date of receipt of this order.”

A proper understanding of the said order would reveal that this Court has only set-aside “that portion of the impugned order” which necessarily means that the portion of the order of respondent No.1 whereby he observed that it would be more appropriate to appoint the petitioner as dealer and this Court has not interfered with the rest of the order of respondent No.1, confirming the order of respondent No.2, setting aside the order of respondent

No.3 appointing respondent No.5. Therefore, after remand of the case by this Court, respondent No.5 has got excluded from consideration and respondent No.3 ought not to have even considered her case for appointment and he should have confined consideration to the remaining candidates, viz., the petitioner and other three candidates, and appointed one among them who is more suitable and eligible for being appointed as the dealer.

For the above mentioned reasons, the impugned order is set-aside. The Writ Petition is disposed of by directing respondent No.3 to consider the cases of the petitioner along with the other three applicants, excluding respondent No.5, and appoint the most suitable among them as the dealer of the fair price shop in question, within two months from the date of receipt of this order.

As a sequel to the disposal of the Writ Petition, WPMP No.33866 of 2011 is disposed of as infructuous.

Justice C.V. Nagarjuna Reddy

Date : 07-10-2015
AM