

**THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

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**WRIT PETITION No.22345 OF 2009**

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**ORDER:**

The Circular vide Rc.No.A1/785/2008, dated 12.01.2009, issued by the Collector (CS), Krishna, Machilipatnam, is challenged before this Court.

2. The petitioner is Association of the District Kerosene Retail Dealer of Krishna District. The case of the petitioner is that Circular runs contrary to the scheme with respect to distribution of kerosene as notified in the Andhra Pradesh State Public Distribution System (Control) Order, 2008 (for short 'Control Order').

3. Though it is a writ petition of the year 2008, no counter affidavit as such has been filed.

4. Heard the learned counsel for the petitioner and the learned Government Pleader.

5. For the purpose of this case, relevant provisions of the Control Order extracted below:

“2(h) “*Nominated Retailer*” means a retail dealer appointed or authorised or approved by or on behalf of the State Government to deal exclusively Public Distribution system Kerosene under Clause (f) for the sale of Public Distribution System kerosene to the card holders under the Public Distribution System;

2(i) “*Hawkers*” means retail dealers appointed or authorised or approved by or on behalf of State Government to deal exclusively Public Distribution System kerosene for sale to the card holders and stationed at fair price shop attached;

5(1) With a view to controlling and ensuring proper distribution of scheduled commodities owned by the State Government, the Appointing Authority may issue authorizations to fair price shops / Nominated Retailers / Hawkers, owned by the State Government or any State Government Undertaking or any public institution or persons including women or Development of Women and Children in Rural Areas Group (DWCRA) or registered women Voluntary Consumer Organizations or thrift groups like Podupu Lakshmi or Co-operative societies which are run exclusively by women (which have only women as members) either wholly or partly, subject to such preferences and reservations as may be prescribed by Government from time to time in this regard to obtain and supply scheduled commodities in accordance with the provisions of this Order:

Provided that the said authorization shall cease to be valid when the Government undertake running of the authorized fair price shop/nominated retailer / hawker either by themselves or through a Government undertaking or a Corporation wholly owned by the Government or a cooperative Society for the benefit of Scheduled Castes or Scheduled Tribes under a Government Scheme:

Provided further that the State Government may, in the public interest, replace all or any of the fair price shop dealers / nominated retailer / hawker and entrust the distribution through a shop set up by the State Government, a State Government undertaking or a Corporation wholly owned by the State Government or a Co-operative Society for the benefit of persons belonging to Scheduled Castes or Scheduled Tribes, under a Government Scheme:

Provided also that any person dealing in the same commodities obtained otherwise than through Government for supply through Public Distribution System, either in his own name or in the name of any member of his/her family shall not be issued authorization to run the fair price shop/nominated retailer/hawker and the Commissioner of Civil Supplies or Director of Civil Supplies or Collector may also suo motu, in cases where the fair price shop dealer/nominated retailer/hawker has also got a licence in his own name or in the name of any of his / her family member to deal with the same commodities; obtained otherwise than through the Government for sale to consumers through Public Distribution System, cancel such authorization:

Provided also that the Collector/Chief Rationing Officer, Hyderabad in the interest of the public may allow the fair price shop dealer/nominated retailer/hawker to convert the shop into village malls to sell different varieties of goods to cater to the needs of the residents/card holders and to increase the viability of the dealer.

Provided also that every fair price shop dealer/nominated

retailer/hawker should give an undertaking to the Appointing Authority concerned that he or she would relinquish the dealership if he or she is elected to any public office.”

The case of the petitioner is that various clauses in the Circular run contrary to the Control Order. The specific contention is that by virtue of the Circular, dated 12.01.2009, the retail distribution of the kerosene through nominated retailers and hawkers has been totally dispensed with and the existing fair price shop dealers have been given the responsibility of distribution of the kerosene. The same runs contrary to the very scheme of the Control Order as the definition of the nominated retailer itself contemplates an exclusive public distribution dealer is to be appointed for the purpose of distribution of kerosene and the definition of hawkers further make it clear that a hawker is to be attached to a separate fair price shop.

6. A combined reading of Section 2(h) and 2(i) make it clear that so far as distribution of kerosene is concerned, the same is not to be entrusted to a fair price shop dealer and this is also clear from clause 5 of the Control Order that nominated retailers and hawkers also are required to obtain licence and authorisation from the authorities.

7. In that view of the matter, it is the contention of the learned counsel for the petitioner that the circular issued by the Collector makes over the functioning of distribution of kerosene to a fair price shop dealer runs contrary to the Control Order. To examine the validity and veracity of the argument, it is necessary to extract the Circular, which reads as under:-.

The circular reads as follows:

“Rc.No.A1/785/2008 Office of the Collector (CS)

Krishna, Machilipatnam,

Dated 12-01-2009

C I R C U L A R

Sub:- Civil Supplies – Krishna District Allotment of Kerosene of Deceased Hawkers to another hawker by tagging cards in stead of F.P. Shop concerned deviating the instructions – Instructions issued.

Ref: Representation filed by Sri M.Bhaskara Rao, President F.P. Shop Dealers Welfare Association, Krishna, Machilipatnam.

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On perusal of the Kerosene allotments of certain Mandals, it is observed that allotment is being made to same hawker by attaching more than one Area/Villages/F.P.Shops in different places in place of deceased hawkers for distribution of kerosene to the cardholders, instead of the F.P.Shop Dealers deviating the instructions issued by the Government.

Therefore, the following instructions are issued to all the Tahsildars/Asst. Supply Officers for strict compliance.

1. The allotment of hawker should be attached to the F.P. Shop Dealer for which he was attached for distribution of kerosene to the cardholders in the event of death/resignation of the Hawker instead of to another hawker.
2. The Hawkers who have been attached (or) kept for in charge more than one ara/shop/village in addition to regular shop or village should be removed immediately and same should be attached to the F.P. Shop Dealer concerned, repeat to F.P. Shop Dealer concerned.
3. The Hawkers who are residing in other than the Mandal attached to them for distribution of kerosene under PDS, the Tahsildars should inform to the Hawkers that if they do not reside in the Mandal concerned, their licences will be cancelled.
4. The Hawkers who are attached more than one area/shop/village in the Mandal and are operating through benami/pouse, The Tahsildar should remove the hawkers from incharge arrangements and allotment be attached to the F.P. Shop Dealer concerned.
5. In the event of death of the Hawkers, proposals must be sent to the Collector (CS) for cancellation of such Licences and also making necessary arrangements in place of deceased hawker by

tagging on to the F.P. Shop Concerned to avoid inconvenience to the cardholders in distribution of kerosene to the cardholders.

6. Report on the licence issued allowing the benami persons to do kerosene business under PDS in place of deceased Hawkers and the Hawkers who left the villages and discontinued the supplies of kerosene, if any, report must be sent to the Collector (CS) for cancellation immediately.
7. The Tahsildars concerned are directed to rectify the above defects and report compliance. Any deviation in this regard, will be viewed seriously.

The Divisional Officers are requested to ensure that the above defects are rectified by the Tahsildars and report compliance.

Receipt of this must be acknowledged.

Sd/- B.Ramaiah

COLLECTOR (CS)

KRISHNA

//True copy By Order//

Sd/-

Asst. Supply Officer

// TRUE COPY //

A closer perusal of the Circular reveals that so far as clauses 1, 2, 4, 5 and 6 are concerned, they do not in any way dispense with the system of hawker, on the contrary they are only meant to meet certain situations arising either on account of the death or on account of a vacancy being created. There cannot be any objection with regard to those clauses as those clauses in the circular only would aid effective distribution of the kerosene through public distribution system. Further, there is no dispensation of the hawker as the clauses in the

circular themselves would make it clear that the hawker is required to be attached to a fair price shop of the area, which means the fair price dealer and the hawker are two different entities. So far as clause No.3 is concerned, certainly would run contrary to the provisions of the Control Order as it is not a requirement in the Control Order that a person, who deserves to be a fair price shop dealer as a hawker, he should be resident of a concerned Mandal. This goes against the Control Order. There is no such requirement in the Control Order itself. The requirement that is being placed by the circular is something outside the purview of the Control Order and further a person is entitled to eke out the livelihood anywhere in the country as that being his fundamental right. In that view of the matter, clause 3 of the Circular cannot be sustained and accordingly, clause 3 is liable to be struck down as violative of the Control Order apart from violative of the Articles 14 and 19(1)(g) of the Constitution of India.

8. Accordingly, the Writ Petition is allowed to the extent of declaring clause 3 of the Circular as *ultra vires* of the Control Order. Consequently, Miscellaneous Petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

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**JUSTICE CHALLA KODANDA RAM**

Date:16.11.2015

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