

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.16548 of 2012

% 27.8.2015

Between:

M.Nehru, S/o Ramla Naik

And 16 others

..... **Petitioner**

And:

\$ The Collector (CS), Medak District

and two others.

.....**Respondents**

< Gist:

> Head Note:

! Counsel for the Petitioner: Mr. O.Manohar Reddy

^ Counsel for the Respondents: GP for Civil Supplies (TS)

? Cases Referred:

NIL

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

*FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH*

WRIT PETITION No.16548 of 2012

Between:

M.Nehru, S/o Ramla Naik

And 16 others

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...

JUDGMENT PRONOUNCED ON 27.8.2015

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

1. Whether Reporters of Local newspapers : No
may be allowed to see the
Judgment?
Yes/No

2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : Yes

3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? : Yes

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

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Date:27.8.2015

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And 16 others.

..... Petitioners

And:

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and two others.

.....Respondents

Counsel for the Petitioner: Mr. O.Manohar Reddy

Counsel for the Respondents: GP for Civil Supplies (TS)

The Court made the following:

ORDER:

This Writ Petition is filed by the petitioners, who are 17 in number, belonging to Kalher, Narayankhed, Manoor and Kangti Mandals of Medak District, aggrieved by the cancellation of selection process of fair price shop dealers for the said Mandals.

The facts in brief are that respondent No.3 has issued a notification inviting applications for appointment of fair price shop dealers for various fair price shops situated in the above-mentioned Mandals. In pursuance thereof, the petitioners and others have applied. On 02.3.2012, written examination was held and after evaluating the papers of the petitioners and other candidates, respondent No.3 has declared the petitioners as having been selected for interview and displayed their names in the notice board. The petitioners averred that on 05.3.2012, a Member of Parliament, within whose jurisdiction the above-mentioned fair price shops are situated, has addressed a letter to respondent No.3 recommending certain candidates for appointment as fair price shop dealers in Narayankhed and Kangti Mandals; that certain persons of Narayankhed Mandal made a complaint to respondent No.1 that irregularities have taken place in the selection process of fair price shop dealers; that on 20.4.2012, respondent No.1 has addressed a letter to respondent No.3, wherein he has informed that the District Collector, Medak has ordered 'quashing' of the entire selection process of fair price shop dealers in Narayankhed constituency, with a direction to take up fresh selection process under the overall observation and supervision of the Assistant Collector (Trainee). Feeling aggrieved by this action, the petitioners filed this Writ

Petition.

Respondent No.3 filed a counter-affidavit, wherein he has denied the fact of Member of Parliament, Zaheerabad, addressing letter, dated 05.3.2012, recommending certain candidates for appointment as fair price shop dealers in Narayankhed and Kangti Mandals. He has, however, averred that certain persons have given a complaint to respondent No.1 stating that some irregularities have taken place in the selection of the fair price shop dealers and requested to cancel the same and that accordingly, respondent No.1, on the directions of the District Collector, Medak, quashed the entire selection process and directed respondent No.3 to take up fresh selection process under the overall observation and supervision of the Assistant Collector (Trainee).

The counter-affidavit asserted that the District Collector is competent to issue such directions whenever complaints are brought to his notice and that there is no illegality in such action. It is, however, admitted in the counter-affidavit that the selection process in respect of fair price shop dealers in Patancheru, Sadasivpet, Raikode and Nyalkal Mandals were undertaken by the same incumbent of office of respondent No.3 in January, 2012 and as no complaints were received in respect thereof, the selection process was finalised and appointment orders were issued to the successful candidates. Respondent No.3 has denied the allegation that the selection process was 'quashed' at the instance of the complaint made by some unsuccessful candidates.

Respondent No.3 in his additional counter-affidavit stated that some candidates who secured less marks in the written examination made a representation to the District Collector, Medak on 25.3.2012 stating that the written examination was not properly conducted and marks were not fairly awarded; that some candidates who were even unable to sign their names were awarded more marks than the candidates who have completed graduation and further studies; that the District Collector has forwarded the said representation to the Joint Collector for necessary action; that the Joint Collector after making necessary enquiry, took

a decision on 09.4.2012 to cancel the entire selection process and directed to take up fresh selection process by following fair and transparent policy; that the said decision was ratified and agreed upon by the District Collector, vide endorsement, dated 09.4.2012; and that thereafter, the Joint Collector vide order, dated 20.4.2012, directed respondent No.3 to take up the selection process afresh under the overall observation and supervision of the Assistant Collector (Trainee). It is further averred that no person has vested right to be appointed as fair price shop dealer and that therefore, the petitioners are not entitled to any relief.

On the directions of this Court, learned Government Pleader for Civil Supplies (Telangana State) has placed before the Court the relevant record, a perusal of which shows that representation was made by certain individuals, numbering about 8 to 10, addressed to the District Collector, wherein it is stated that they have passed degree in first class and appeared in the written test; that while they were not awarded even the cut- off marks for eligibility, certain persons who have studied 7th class and who cannot even sign were awarded 'A' grade; and that, from this, it is clear that political influence was exerted on respondent No.3 to select the incompetent candidates. The representation has questioned the objective method of examination and pleaded for cancellation of the entire selection process and conducting of fresh written examination with essay type questions by fixing 80 marks for the written test and 20 marks for viva voce. On this representation, the Special Collector (Trainee) has made the following endorsement:

"In view of the allegations as levelled in the petition in selection of F.P. Shop dealers, the entire action so far to the selection of F.P. Shop dealers for the vacancies of F.P. Shop dealers by R.D.O may be quashed and direct the RDO to take up selections under the over all observation and supervision of one Special Officer i.e., AC (U/T)."

Under the said endorsement, the District Collector has

endorsed "Yes" and signed on 09.4.2012.

At the hearing, Sri O.Manohar Reddy, learned counsel for the petitioners, has advanced the following contentions:

- (1) That under the Andhra Pradesh Public Distribution System (Control) Order, 2008 (for short 'the Control Order, 2008'), respondent No.3 is the appointing authority, respondent No.2 {he is also shown as respondent No.1 by describing him as Collector (CS)} is the appellate authority and that the District Collector is the revisional authority;
- (2) That if any person is aggrieved by the selection and appointment of the candidates as fair price shop dealers, he is entitled to file an appeal and also avail a further remedy of revision and instead of doing so, some of the unsuccessful candidates have made a representation to the District Collector, who has cancelled the entire selection process, which is wholly without jurisdiction;
- (3) That alternatively, the District Collector has not held any enquiry whatsoever and has unilaterally cancelled the entire selection process without recording his satisfaction that the selection was not conducted in a fair manner; and
- (4) That the same incumbent of respondent No.3 has conducted selection of fair price shop dealers in respect of Patancheru, Sadasivpet, Raikode and Nyalkal Mandals and even according to the counter-affidavit of respondent No.3, the selections in respect of those Mandals were approved.

Learned Government Pleader for Civil Supplies (Telangana State) has reiterated the averments in the counter-affidavit and the additional counter-affidavit and submitted that being the head of the district administration, the District Collector has jurisdiction to cancel the selection process, if he is satisfied that the same is vitiated by irregularities.

I have carefully considered the respective submissions

of the learned counsel for the parties.

Clause-20 of the Control Order, 2008 provides the remedy of filing an appeal to any person aggrieved by any order passed by the appointing authority under Clause-5 thereof appointing a fair price shop dealer. Under Clause-21 of the Control Order, 2008, a further remedy of revision is provided against the order passed by the appellate authority. Though respondent No.3 in his counter-affidavit denied the allegation that the selection process was cancelled at the instance of certain unsuccessful candidates, in the additional counter-affidavit, he has candidly admitted the said averment of the petitioners. Thus, some unsuccessful candidates in the selection process have chosen the route of making a generic representation to the District Collector, instead of availing the specific remedy provided to them under the Control Order, 2008. The District Collector is only a revisional authority under Clause-21 of the Control Order, 2008. He can exercise his revisional jurisdiction only if an aggrieved person files a revision. Unlike under some statutory enactments/rules, the Control Order, 2008 does not vest *suo motu* jurisdiction in the District Collector. Therefore, unless a Revision Petition is filed in connection with any selection process, the District Collector cannot exercise his jurisdiction.

The contention of the learned Government Pleader that being the district head, the District Collector has over all jurisdiction has no merit as, the selection process is governed by the Control Order, 2008, which was issued in exercise of the power of the State Government under Section-3 read with Section-5 of the Essential Commodities Act, 1955. Therefore, the Control Order, 2008 is statutory in nature and any action taken in connection with the selection process must be in strict conformity with the provisions of the same. Concededly, no power is vested in the District Collector by the Control Order, 2008 to interfere with the selection process on a general representation made by a few unsuccessful candidates. Hence, I have no hesitation to hold that the District Collector has no jurisdiction to interfere with the selection process and cancel the same.

There is another angle from which the action of the District Collector needs to be examined. If an unsuccessful candidate in any selection process, instead of availing the remedy of appeal, is permitted to make representation(s) to higher authorities and at the instance of such unsuccessful candidate, if interference is caused, selection process will be subjected to grave uncertainties for, there is every likelihood of some unsuccessful candidates in every selection process approaching the District Collector or other higher authorities seeking to nullify the selection process. This, in the view of this Court, is wholly undesirable as the same derails the whole selection process in the guise of irregularities.

While there can be no two opinions about the imperative need for conducting selection process in a fair and honest manner, the selection process shall not be set at naught on mere representations of the unsuccessful candidates. It is always desirable that the unsuccessful candidates avail the remedies of appeal and revision, instead of making representations with generic, vague, unsubstantiated and omnibus allegations.

As submitted by the learned counsel for the petitioners, the District Collector has not assigned any reasons whatsoever, supported by any material, to concur with the opinion of the Assistant Collector (Trainee). He has made a cryptic endorsement to the effect 'Yes' under the endorsement of the Assistant Collector (Trainee).

Respondent No.3 has himself admitted in the additional counter-affidavit that the selection process conducted by the same incumbent for two Mandals in question has conducted selection for Patancheru, Sadasivpet, Raikode and Nyalkal Mandals and that the same were approved and there were no allegations whatsoever in respect thereof. Therefore, the submission of the learned counsel for the petitioners that the respondents have cancelled the selection process for the aforesaid two Mandals, based on extraneous reasons, rather

than the fact that the selection process is vitiated by irregularities, cannot be completely ignored.

Though the selected candidate has no vested right for appointment as pleaded by the respondents, he is, nevertheless, entitled to question cancellation of the selection process, if the same suffers from illegalities and arbitrariness.

For the reasons discussed hereinbefore, the petitioners have succeeded in establishing that cancellation of selection process suffers from arbitrariness and the vice of lack of jurisdiction.

On the analysis as above, the impugned proceeding of respondent No.1 is quashed. Respondent No.3 is directed to resume the selection process from the stage where it was stopped and complete the same within one month from the date of receipt of a copy of this order.

As a sequel to disposal of the Writ Petition, WPMP.No.21250 and 21251 of 2012 are disposed of as infructuous.

*JUSTICE C.V.NAGARJUNA
REDDY*

27th August 2015

Note:

LR copies to be marked.

B/o

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