

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

W.P.No.16465 of 2011

ORDER

This writ petition was filed seeking to declare the impugned order dated 10.6.2011 passed by the 4th respondent removing the petitioners from the kerosene hawkership without issuing any notice as arbitrary and illegal.

The petitioners are the kerosene hawkers and they have been distributing kerosene under valid licence issued by the authorities for the last 15 years. It appears that a complaint was made to the authorities stating that the petitioners are benami persons. Based on the said complaint, the 4th respondent conducted an enquiry and submitted a report to the 2nd respondent. In the said report, he categorically stated that the persons against whom complaint was lodged were not benami hawkers and that they are licence holders. In spite of receipt of such report, the 2nd respondent passed an order on 7.6.2011 directing the 4th respondent to allot kerosene quota to kerosene hawkers instead to the concerned fair price shop dealers duly removing the in-charge arrangements. The order passed by the 2nd respondent was a general order. Based on the said order, the 4th respondent passed an order on 10.6.2011 removing the petitioners, who were stated to be the non-resident hawkers, and the quota allotted to the petitioners was

transferred to the fair price shop dealers concerned. Challenging the same, the present writ petition was filed.

This Court by order dated 16.6.2011 granted interim direction to the respondents to continue the petitioners as kerosene hawkers in their respective licenced places. The said order has been in operation till today though WVMP No.3199 of 2011 was filed by respondents 5 to 22.

A counter-affidavit is filed on behalf of respondents 1 to 4 stating that one N.Subba Rao, fair price shop dealer of Donepudi Village along with others, submitted a representation to the Collector's Grievance Cell held on 14.2.2011 alleging that there are 35 fair price shops out of which 17 shops had kerosene oil allotment. But the kerosene was being distributed by benami dealer viz., L.Anjaneyulu of Somasundarapalem Village, Tenali Mandal to all the 17 fair price shops causing much inconvenience to the card holders. The Tahsildar, Kolluru enquired all the petitions referred to by the Joint Collector, Guntur, duly issuing notices to the petitioners as well as to the hawkers and submitted a report to the Joint Collector, Guntur, on 21.3.2011. It was stated that 11 hawkers are non-residents of the Mandal and they are residing in Tenali Town and Somasundarapalem Village of Tenali Mandal. It was also stated in the report that during the Mandal Level Food Advisory Committee held on 28.2.2011, the Mandal Parishad President and co-chairman of the FACT passed resolution stating that the kerosene hawkers are not distributing

the kerosene to the cardholders properly and requested to remove the hawkers and allot the kerosene to the fair price shop dealers for fair and smooth distribution of kerosene in the Mandal. The Government issued a further Memo on 26.4.1994 expressing its intention to make available all the essential commodities including kerosene from one roof i.e., fair price shop. The said policy was upheld by this Court in W.P.No.24949 of 1995, 7831 and 7832 of 1996. The Government issued a further Memo dated 27.1.2001 directing the authorities to follow the said policy. As per the said policy, if the kerosene hawker expires, the licence is not transferable as the same is issued in favour of the person and the ownership thereof cannot accrue to his legal heirs. In those circumstances only as the petitioners were non residents of Kolluru Mandal, the Tahsildar passed an order on 10.6.2011 removing the 11 non-resident hawkers of Kolluru Mandal and allotting the quota to the respective fair price shop dealers. However, it was admitted that no notice calling for explanation was issued to the petitioners, but during the process of enquiry, the 4th respondent issued notices and conducted a detailed enquiry wherein it was confirmed that all the 11 hawkers are non residents of Kolluru Mandal and they gave the address as Somasundarapalem, Nandivelugu and Tenali Mandal.

A perusal of the impugned order shows that on the basis of the proceedings of the Collector dated 7.6.2011, the 4th respondent removed the petitioners' licence on the ground that they are

non-resident hawkers of Kolluru Mandal, but it was admitted that the petitioners have been distributing the kerosene for nearly 15 years on the basis of the licence issued in their favour. In the representation dated 14.2.2011, it is stated that there are no benami hawkers and only licence hawkers have been distributing the kerosene. But it was clearly stated that the petitioners are non-residents and the Mandal Level Food Advisory Committee requested for removal of the hawkers. There is no material on record to show that the non resident hawkers cannot be allowed to continue to have licence. Admittedly, no notice was issued to the petitioners and the petitioners have been continuing by virtue of the interim orders dated 16.6.2011.

In the circumstances, the Writ Petition is allowed and the 3rd respondent is directed to take action in accordance with the existing scheme and the rules applicable to the kerosene hawkers and if the petitioners are not eligible to be continued, they should be given appropriate notice and an opportunity and after consideration of the explanation of the petitioners appropriate orders shall be passed. The entire exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE A.RAMALINGESWARA RAO

27th October, 2016
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