

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

+ WRIT PETITION No.36226 OF 2015

% 4th April, 2016

Kethavath Shankar

... Petitioner

AND

\$ The District Collector, Nalgonda District and five others.

... Respondents

! Counsel for the Petitioner : Sri S.R. Sanku

^ Counsel for the respondents 1 to 5 : Learned Government Pleader
Civil Supplies (TS)

^ Counsel for the respondent 6 : Sri A. Bhaskara Chari

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? Cases referred:

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 36226 of 2015

ORDER:

This Writ Petition is filed questioning the proceedings dated 08.10.2015 of the 5th respondent-Commissioner of Civil Supplies Hyderabad, rejecting the claim of the petitioner for preferential appointment for the Fair Price Shop license authorization under G.O.Ms.No.4, dated 28.04.2014.

This Writ Petition came up for admission on 06.11.2015. Along with the writ petition, the petitioner filed W.P.M.P. No.46615 of 2015 seeking a direction to the Respondents to consider and dispose of the representation of the petitioner dated 17.10.2015 and to consider appointing him as Fair Price Shop Dealer at Yapalapaya Thanda, Rekulagadda Village, Chandampet Mandal, Nalgonda District w.e.f. 01-04-2016, as the temporary appointment of the 6th Respondent would come to an end w.e.f. 31.03.2016. While ordering Rule nisi, this Court passed interim orders as prayed for in W.P.M.P.No.46615 of 2015.

The 3rd respondent-Revenue Divisional Officer, Devarakonda Division and 6th respondent-Sri K. Basha, S/o Dulya filed vacate stay petitions bearing W.V.M.P. Nos.1093 of 2016 and 681 of 2016 respectively, seeking vacating of the interim order dated 06.11.2015 passed in W.P.M.P.No.46615 of 2015 in W.P.No.36226 of 2015.

As both the parties desired the matter to be disposed of, the main writ petition itself is taken up for hearing.

It is the case of the petitioner that petitioner's father by name Venkati, was the fair price shop dealer of Yapalapaya Thanda, Hamlet of Rekulagadda, Chandampet Mandal, Nalgonda District and he died on 01.10.2009. His father as Fair Price Shop Dealer never had any complaints against him and he discharged his duties from 1981 to 2009 diligently. The petitioner is the eldest son and there are three

brothers and mother and they do not have objection for the petitioner to be appointed as a fair price shop dealer. He studied upto 10th class and unemployed. In all respects he is eligible to be appointed as fair price shop dealer under G.O.Ms.No.4. He made an application to the 3rd respondent on 24.11.2014 to appoint him as Fair Price Shop dealer on compassionate grounds. As the same was not being considered, he filed W.P.No.5156 of 2015 and the same was disposed of on 03.03.2015 directing the 3rd respondent-Revenue Divisional Officer to consider the application of the petitioner. Thereafter by an order dated 08.10.2015, 5th respondent rejected his application without considering the same in proper perspective on flimsy grounds that notification issued for appointment of Far Price Shop dealers was prior to issuance of the G.O.Ms.No.4, and as such there is no provision in the said G.O. to give preference to the legal heirs of the deceased Fair Price Shop dealers.

The case of the 6th respondent-Vacate Petitioner is that the petitioner's brother by name Kethavath Ravi Kumar was appointed as a temporary dealer on 23.10.2009 and he functioned as such till 31.03.2011. Pursuant to the notification issued on 21.12.2009 calling for applications for appointment of a permanent dealer to Yapalapai Thanda Fair Price Shop and after the oral test one Kethavath Basha was appointed as Fair Price Shop dealer on 26.04.2010 and authorization was issued in his favour on 04.05.2010 and thereafter the same was being renewed for every two years and the same is valid upto 31.03.2016. Now, on account of the interim order granted by this Court, efforts are being made to appoint the petitioner in his place. It is further pleaded that the appointment made in his favour is pursuant to the notification calling for appointment of a permanent dealer and by the time G.O.Ms.No.4, dated 28.02.2014 was issued, he was already functioning as a permanent dealer and as such there was no vacancy to appoint the petitioner invoking G.O.Ms.No.4 which is prospective in

nature and the same cannot have any application to the cases where there is no vacancy. It is further stated that petitioner's brother Kethavath Ravi Kumar filed W.P.No.241 of 2010 questioning the notification dated 21.12.2009 and initially obtained interim stay and thereafter the said writ petition was disposed of by an order dated 02.02.2010 rejecting the claim of Kethavath Ravi Kumar for permanent appointment by giving liberty to the said K. Ravi Kumar to apply pursuant to the notification. However, the said Ravi Kumar was permitted to distribute the essential commodities till such time selections are made pursuant to the Notification dated 21.12.2009. That order has become final and after disposal of the W.P.No.241 of 2010 he came to be appointed as a Fair Price Shop Dealer.

In the same way the 3rd respondent also filed a counter affidavit and sought vacate petition.

Heard Sri S.R. Sanku, learned counsel for the petitioner, Sri A. Bhaskara Chari, learned counsel for the 6th respondent and the learned Government Pleader for Civil Supplies.

The facts are not in dispute. The question which falls for consideration is the applicability or non-applicability of the G.O.Ms.No.4, dated 28.02.2014. While it is the case of the petitioner that he is entitled to be appointed as Fair Price Shop Dealer in place of his deceased father on account of G.O.Ms.No.4. It is the stand of the respondents by the date G.O.Ms.No.4 came into existence, there was no vacancy in which the petitioner could be appointed and G.O.Ms.No.4 is only prospective in nature. The contention of the petitioner that his case was directed to be considered by this court in terms of G.O.Ms.No.4 in the orders passed in W.P.No.5156 of 2015 and in the counter affidavit filed in C.C.No.1145 of 2015 in W.P.No.5156 of 2015 the 3rd respondent admitted that 6th

respondent's appointment was only on temporary basis and as such there is no impediment on the petitioner being appointed as a dealer cannot be accepted.

A careful reading of the counter affidavit in C.C. No.1145 of 2015 does not indicate any statement having been made by the 3rd respondent. Apart from that a perusal of the order in W.P.No.241 of 2015, which was filed by the petitioner's brother i.e., Kethavath Ravi Kumar clearly sets out that a notification was issued calling for appointment as permanent dealer and the petitioner's brother was directed to be continued only till permanent selections are made. Further in W.P.No.5156 of 2015 the 6th respondent was not made a party and it was never brought to the notice of the Court about the 6th respondent having been appointed as a permanent dealer. In other words, there was no occasion for this Court to consider the applicability or otherwise of the G.O.Ms.No.4. W.A.(SR) No.104988 of 2015, filed by the 6th respondent was disposed of without expressing any opinion with regard to G.O.Ms.No.4. In the case on hand, by the time G.O.Ms.No.4 came to be issued and undisputedly there was no vacancy and as the 6th respondent came to be appointed as far back on 04.05.2010, the authorization given in favour of the 6th respondent though for initial period of two years was renewed from time to time. Clause 17 of the authorization issued in favour of 6th respondent may be noticed;

“Clause-17. The holder of this authorization shall work for a minimum period of five years. Unless suspended or cancelled by competent authority, Resignation etc., seeking to leave the dealership shall not be accepted within this minimum period of five years.”

Clause 17 indicates an obligation on the part of the dealer to work for a minimum period of five years except when the authorization

is either suspended or cancelled and it is further prohibits a dealer even to resign before completion of 5 years. This is a clear indication that a dealer who has been appointed shall discharge his duties at least for a minimum period of five years. Further, there being a renewal clause for every two years, unless there is something adverse against an existing dealer disentitling as a matter of right, the dealership is required to be renewed. In that view of the matter, there is a vested right accrued in favour of the 6th respondent. So far as the petitioner is concerned, though his case is eligible to be considered in terms of G.O.Ms.No.4 such eligibility is subject to the condition of there being a clear vacancy. So far as Clause 6 (iii) of the G.O. is concerned the same is only intended to restrict the eligibility to the cases of a dealer's demise from and after 2009. The clause only sets out the eligibility criteria and the same needs to be understood subject to the availability of vacancy. Admittedly, in the present case there being no vacancy after petitioner acquiring a right, the rejection of the petitioner's case by the impugned order dated 08.10.2015 cannot be said to be illegal and contrary to the G.O.Ms.No.4.

Accordingly, the Writ Petition is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, shall also stand dismissed.

CHALLA KODANDA RAM, J

Dated: 04.04.201.

Note: L.R. Copy to be marked.

Issue copy forthwith.

B/o

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