

HON'BLE SRI JUSTICE S.V.BHATT

W.P.Nos.17655 AND 26032 OF 2016

COMMON ORDER:

Heard Mr.Sddarth for petitioner, Mr.Rajeshwar Rao for respondent Nos. 2 to 4 and Ms. Sundari for respondent No.7.

One V.Lokanadhan is the writ petitioner in these two writ petitions. The subject matter of these two writ petitions relates to a sale point (for short 'the sale point') allotted by Tirumala Tirupathi Devasthanams/respondent No.7 in favour of A.P. Dairy Development Cooperative Federation Limited/2nd respondent herein. The sale point is located at 1st N.C. Tirumala Hills.

The petitioner relies on proceeding No.163/DD/CTR-MPL/2015 dated 01.09.2015 for assertion of a right allegedly transferred by 4th respondent and challenges proceeding No.160/DD/CTR-MPL/2015 (TML) dated 25.09.2015 allegedly conferring rights on K.Naveen Kumar/5th respondent, as illegal, violative of principles of natural justice, arbitrary and unconstitutional.

The prayers read thus:

W.P.No.17655 of 2016:

“...WRIT OF MANDAMUS declaring the action of Respondent No.4 in issuing proceedings No. 160/DD/CTR-MPL/2015(TML) dated 25-9-2015 by apportioning the 1st N.C.Vijaya Dairy parlour at Tirumala into 3 portions and by reflecting the respondents 5 and 6 as being entitled to operate the portions as being illegal, arbitrary, violative of Articles, 14, 16, 19(1) (g) of the Constitution of India and in violation of Principles of Natural Justice and consequently set aside the same...”

W.P.No.26032 of 2016:

“...WRIT OF MANDAMUS i) to declare the action of respondents 3 to 6 in high handedly interfering with the possession of the Petitioner's shop at 1st NC Vijaya Dairy Parlour Tirumala as illegal and arbitrary, without jurisdiction, violative of Articles 14, 19, 21 principles of natural justice and the order dated 07-06-2016 of this Hon'ble Court in W.P. No.17655 of 2016; and ii) consequently direct respondents 3 to 6 to not to interfere in the Petitioner's possession of 1 st NC Vijaya Dairy Parlour; and iii) direct the 2nd respondent to initiate appropriate action against respondents 5 and 6..”

The reference to allegations in W.P. No.17655 of 2016 would suffice for disposing of these two writ petitions.

On 20.08.2015, the petitioner claims to have applied to 2nd respondent for appointing him as Operator to sell the milk and milk products of 2nd respondent at sale point. The 4th respondent, on the application dated 20.08.2015, issued proceeding No.163/DD/CTR-MPL/2015 dated 01.09.2015 appointing petitioner as Operator of the sale point for the period from 01.09.2015 to 31.03.2018. The petitioner alleges to have spent Rs.60,000/- towards cleaning and furnishing the sale point. The petitioner is doing business at the sale point. The definite case of petitioner is that the respondent corporation collected Rs.4,00,000/- as deposit towards supply of milk and milk products to petitioner. On 28.05.2016, respondents 5 and 6 came to the sale point and tried to dispossess the petitioner under the garb of proceeding No.160/DD/CTR-MPL/2015 (TML) dated 25.09.2015 said to have been issued by 4th respondent appointing respondent No.5 as Operator of sale point. The

petitioner came to know the appointment of another Operator through proceeding dated 25.09.2015 by the 4th respondent.

The proceeding dated 25.09.2015 is issued by dividing the sale point into three shops. Proceeding dated 25.09.2015 is illegal, arbitrary and violative of principles of natural justice. According to petitioner, the petitioner was appointed as Operator basing on the application dated 20.08.2015, the proceeding dated 01.09.2015 is subsisting as on date and by affecting the right conferred on the petitioner, through a cryptic order the proceeding dated 25.09.2015 has been issued. The grounds of challenge are briefly referred to, to avoid repetition of the same.

The 4th respondent filed counter affidavit along with a petition to vacate the interim order dated 07.06.2016. The 4th respondent contends that the petitioner has no *locus standi* to file the writ petition and prays for dismissing the writ petition. It is contended that in view of the disputed questions of fact namely on the genuineness or existence of proceeding dated 01.09.2015, a roving enquiry is required to determine these facts in issue and such enquiry is not convenient or advisable in Judicial review under Article 226 of the Constitution of India. The application dated 20.08.2015 and the appointment order dated 01.09.2015 are completely denied. For convenience, the relevant portions are excerpted hereunder:

“ It is submitted that the case of the petitioner is that he made an application on 20-8-2015 to the 2nd respondent to appoint him as operator to sell the Vijaya Brand Milk and Milk Products at Vijaya Dairy Parlour at Tirumala, and that his application was considered and the 4th

respondent issued proceedings Dt.1-9-2015 appointing petitioner as an operator for the period from 1-9-2015 to 31-3-2018 and that he has taken possession of the parlour from the 2nd respondent staff after investing nearly Rs.60,000/- and established business and now paying the taxes and charges to the authorities is totally false and incorrect. On thorough verification in the office of the 2nd respondent and as well as the respondent No.3 and 4 no such application Dt.20-8-2015 is found therefore his contention that he was appointed as an operator by the 4th respondent through proceedings Dt.1-9-2015 is not correct.”

“ It is submitted that the contention of the petitioner that the respondents No.1 to 3 collected of Rs.4,00,000/- towards deposit from the petitioner for supply of milk and milk products is not correct and misleading. The contention of the petitioner that Respondent No.5 and 6 by virtue of proceedings Dt.25-9-2015 of the 4th respondent trying to dispossess the petitioner is equally false and incorrect. In fact the petitioner has nothing to do with the operation of dairy parlour and no way concerned with the parlour business and therefore the petitioner making all false allegations and vague averments with the regard facts of the case. The contention of the petitioner that 4th respondent appointed him as an operator to run the dairy parlour pursuant to his application Dt.20-8-2015 and issued appointment orders on 1-9-2015 is totally false and incorrect. Further contention that within 24 days, the 4th respondent issued another order appointing the shop reflecting the names of the other people to operate the shop and that the order of 4th respondent Dt..25-9-2015 does not refer name of the petitioner herein and does it refer the prior appointment of the petitioner on 1-9-2015 is not correct. Because, the petitioner is a third party and no way concerned with the dairy business and no such order Dt.1-9-2015 was issued by the 4th respondent in favour of the petitioner, therefore, the question of reference of such order in the proceedings Dt.25-9-2015 does not arise. The contention of the petitioner that he has got vested right to run the parlour till 31-3-2018 is not correct.

“....the contention of the petitioner that the respondent No.5 and 6 interfering with the business of the petitioner by virtue of Order dated 25-9-2015 and trying to take the possession of the shop is not correct. The petitioner in the absence of any authorization said to have been issued by the official respondents approached this Hon'ble Court with false averments on the basis of concocted and forged appointment letter Dt.1-9-2015 said to have been issued by the 4th respondent. Therefore the petitioner has got no legal right to invoke the jurisdiction of this Hon'ble Court basing on the fraudulent and forged documents. The petitioner approached this Hon'ble Court with unclean hands relying on forged document, therefore, do not deserve any relief. Hence the writ petition is liable to be dismissed.”

Hence, the respondent prays for dismissing the writ petition.

The petitioner in view of the allegations of fraud and forgery of proceeding dated 01.09.2015 against him, filed WPMP No.33410 of 2016 for sending signatures of 4th respondent in proceeding dated 25.09.2015, the signatures on the counter affidavit and the disputed signatures in the appointment order dated 01.09.2015 for expert opinion. The petitioner through Memo dated 27.03.2017 has placed the proceeding dated 01.09.2015 (original).

The respondents filed counter affidavit opposing the prayer for sending the documents for expert opinion. To complete the narration on this aspect of the matter, I refer to the filing of First Information Report (FIR) in Crime No.48/2016 dated 25.07.2016 by the 5th respondent against the petitioner. The FIR filed under Sections 471, 341, 448 and 506 IPC. The crime is pending investigation.

The learned standing counsel has placed on original record for inspection of Court to explain the misuse of the sale point by a few individuals. He has particularly drawn the attention of the Court to the letter addressed by the Liquidator of the Chittoor District Cooperative Milk Producers Union Limited, Chittoor dated 20.08.2010 and letter dated 30.08.2010 to 2nd respondent. As this Court having regard to admitted position viz., the lessor is Tirumala Tirupathi Devasthanams and to assist the Court, he has fairly submitted that the sale point has been under the enjoyment of unauthorised persons, however, as respondents 2 to 4 are denying and disputing the proceeding dated 01.09.2015, it was vehemently contended that no relief whatsoever to a person who comes to Court with unclean hands and places reliance on forged and fabricated documents can be granted. After perusing the original record as the sale point belongs to Tirumala Tirupathi Devasthanams/7th respondent, after hearing the counsel, the Tirumala Tirupathi Devasthanam was impleaded as 7th respondent. The 7th respondent on receipt of notice through the Estate Officer places on record the status report of Executive Officer, Tirumala Tirupathi Devasthanams and the operative portion reads thus:

“Either the petitioner or the respondents 5 & 6 are nothing to do with the said sale point since the TTD was in the sense that the APDDCF Ltd., was doing business through its authorized employee or through authorized agent since the permission was accorded to it but not to its agent or anybody as the royalty amount had been paying through online revenue collection system in the name of APDDCF Ltd. up to December, 2015. But on recent field enquiry following violation of terms and conditions are observed:

- One unauthorised person was found to have been running business at the sale point.
- Items in addition to the dairy products are being sold.
- The space in front portion found to be encroached and the sale point is found to be converted in to six rooms at back side and being used for accommodation of their staff and as godown.
- As could be verified from the Online Revenue collection system royalty amount was paid only up to December,2015. From January-2016 onwards the payment of royalty is due.

In view of the above , TTD may be permitted to seize the said sale point and go for auction.”

In spite of several circumstances *prima facie* pointing against petitioner, the petitioner has pressed the prayers in these two writ petitions as well as prayer in WPMP No.33410 of 2016.

Mr.Siddarth, counsel for petitioner contends that the 4th respondent by accepting the application dated 20.08.2015 issued proceeding dated 01.09.2015, received a sum of Rs.4,00,000/- towards deposit, made petitioner spent Rs.60,000/- to clean and furnish the sale point. So once a right is created in favour of petitioner, issuing proceeding dated 25.09.2015 during the currency of proceeding dated 01.09.2015 is illegal, arbitrary, violative of principles of natural justice and unconstitutional. He relies upon annexures filed along with the writ petitions and also additional documents to show that the petitioner is in fact, in possession and he is Agent of respondents 2 to 4 and prays for setting aside the proceeding dated 25.09.2015.

Per contra Mr. Rajeshwar Rao contends that the proceeding dated 25.09.2015 is for a period of one year from 15.09.2015 and period was over by 14.09.2016, and for all purposes writ prayer is rendered ineffective and infructuous. The counsel further contends that the state of affairs disclosed by respondents 2 to 4 is reiterated by the status report filed by 7th respondent. As the authority which has issued the proceeding is stoutly denying the existence of the document on which the petitioner is relying upon, this Court for the sake of asking under Article 226 of the Constitution of India ought not to undertake a roving enquiry in these matters as otherwise this Court is satisfied that the petitioner has failed to make out prima facie case or a recognised right for enforcement under Article 226. To the status report of the 7th respondent, he fairly states that as the property belongs to Devasthanam, Devasthanam is entitled to act in the matter and protect its interest. He prays for dismissing the writ petitions as well as the WPMP.

Ms. Sundari, learned standing counsel for 7th respondent reiterates the stand of 7th respondent and submits that after noticing the commissions and omissions in enjoyment of sale point which belongs to institution, the 7th respondent will take possession and confer leasehold rights in accordance with the Rules on the successful participant.

I have perused the material available on record and noted the submissions of counsel appearing for the parties. Now the point for consideration is:

Whether the petitioner is entitled for the reliefs prayed in the writ petitions?

The case of petitioner is that on 20.08.2015, an application was made requesting for appointment of petitioner as Operator for the sale point. According to him, the application was considered, accepted and resulted in proceeding dated 01.09.2015. Basing on the proceeding dated 01.09.2015, the petitioner deposited Rs.4,00,000/-, spent Rs.60,000/- for furnishings and is doing the business.

The allegation in writ affidavit on possession reads thus:

“ I submit that after obtaining this appointment order, I have taken over the possession of the parlour from the Dairy Development Cooperative Federation Staff, and after investing nearly Rs.60,000/- into cleaning and furnishing the place, I have established my business there.”

“ Further the respondent corporation herein has collected Rs.4,00,000/- as deposit towards supplying me with milk and milk products.”

So far as the limited purpose of exercising the jurisdiction under Article 226 of the Constitution of India, the interdependent circumstances are examined by this Court.

These above averments in the writ affidavit ought to be examined closely. The report of Liquidator as early as 2010 suggests that unauthorised persons are operating the sale point and a request was made to the 2nd respondent to act in the matter to protect the interest. The 4th respondent is denying the issuance of

proceeding dated 01.09.2015. The petitioner places on record the original of proceeding dated 01.09.2015. After perusing the original, it appears to this Court that whitener has been applied to efface words "yours faithfully" located above the alleged signature of respondent No.4. The proceeding is issued in computer printout, however "yours faithfully" was hand written and it is effaced with whitener. To give legitimacy to any Operator to do business, the 4th respondent being an allottee from 7th respondent can take or give possession in the manner known to law. But, in the case on hand, the petitioner claims to have taken possession from staff of Dairy Development Corporation. It is not clear whether taking possession is unilateral or mutual or otherwise. In the series of circumstances relied upon by the petitioner deposit of Rs.4,00,000/- attaches great importance. The counsel for petitioner on instructions submits that there is no documentary evidence to prove depositing of Rs.4,00,000/- with respondents 2 to 4 for supplying the milk and milk products. Upon appreciating the three circumstances, namely, proceeding dated 01.09.2015, taking possession and deposit of Rs.4,00,000/- *prima facie* this Court is of the view that the petitioner has not established the case to exercise the discretion in his favour. The payments made to Toll Gate etc. cannot and could not be treated as valid documents to accept a creation of right in favour of petitioner as Operator of sale point. I am satisfied that no ground is made out for granting any relief to petitioner. Writ petition fails and accordingly dismissed.

In view of the findings recorded in W.P. No.17655 of 2016, the prayers as made in W.P. No.26032 of 2016 are unavailable and by

enforcing a document to which a complete legitimacy cannot be attached, the relief is not considered and granted.

The standing counsel for 7th respondent, on instructions, submits that the 7th respondent will take immediate steps as are required for taking possession of the sale point and auction the rights in accordance with Rule 138 of G.O.Ms.No.311 Revenue, Endowments-I dated 09.04.1990. The statement is accepted. Respondents 2 to 4 are directed to cooperate with the 7th respondent in this behalf and to prevent misuse of a place belonging to Devasthanam by unauthorised persons. The original proceeding dated 01.09.2015 placed with Memo dated 27.03.2017 is kept in a sealed cover. As FIR is filed against the petitioner complaining forgery and creation of documents, the Registry, as and when required by Police, is directed to hand over the original to Police for investigation of FIR No.48 of 2016, Tirumala II Town.

The prayer in WPMP No.33410 of 2016, at this stage need not be considered as investigation is pending in F.I.R. No.48 of 2016. The WPMP is dismissed.

The writ petitions fail and are dismissed. No order as to costs.

Miscellaneous petitions, if any pending, stand closed.

S.V.BHATT,J

Date:07.04.2017

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