

THE HON'BLE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

W.A.NO. 714 of 2018

JUDGMENT: (Per Hon'ble the Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order dated 3.4.2018 passed by the learned Single Judge in W.P.No. 10905 of 2018. The said writ petition was filed seeking a Writ of Mandamus to declare the proceedings of the Revenue Divisional Officer, Tandur Revenue Division, Vikarabad district dated 17.3.2018, to shift fair price shop No. 9 from the market opposite to Dena Bank to a location in Ward No. 22 of Gandhinagar colony of Tandur Town in Vikarabad district, as being arbitrary and illegal.

Facts, to the limited extent necessary are that the writ petitioner was granted authorization to run fair price shop No. 9 of Tandur Town, Vikarabad district. On the basis of the complaint made by the Councilor of Ward No.23 in Gandhinagar colony, the Minister is said to have endorsed that the Fair Price Shop should be shifted to Gandhinagar ward No. 22. As the appellant/writ petitioner was directed to shift the fair price shop without being given an opportunity of being heard, he filed WP No. 34998 of 2016. By order in W.P.No.34998 of 2016 dated 18.10.2016, the learned Single Judge directed the respondents herein to consider the petitioner's representation and take an appropriate decision as warranted in the circumstances of the case. Till then status quo was directed to be maintained for a period of eight weeks. Thereafter, order dated 17.3.2017 came to be passed by the respondents herein directing the appellant-writ petitioner to shift the fair price shop, to a location in Gandhinagar colony

ward No. 22, in terms of the guidelines issued in G.O.Rt.No. 55 dated 12.5.2015. The appellant-writ petitioner was informed that, if he did not shift the shop to ward No. 22, the Tahsildar, Tandur should tag the shop to the adjacent fair price shop dealer with instructions to distribute essential commodities at Gandhinagar colony ward No. 22 in the month of April, 2018. Aggrieved thereby, the appellant-writ petitioner invoked the jurisdiction of this Court.

In the order under appeal, the learned Single Judge observed that the intention of the Government, behind the Public Distribution System, is ultimately the convenience of the public; in the instant case when the petitioner was asked earlier, by way of memo dated 6.9.2016, to shift the shop to Gandhinagar colony, he had questioned the said action by filing W.P.No. 34998 of 2016; the earlier action of the respondents was interdicted only on the ground that the petitioner was not given an opportunity of being heard; pursuant to the said order, the petitioner had submitted his objection on 24.10.2016 wherein he stated that, as per the guidelines issued in G.O.Rt.No. 55, dated 12.5.2015, the distance from the residence of the cardholders should not be more than 3 KMs; in the present case the distance of the fair price shop from all these colonies is not more than 3 KMs; he had also invested a sum of Rs.70,000/- for obtaining the fair price shop in the earlier premises as security deposit on a monthly rent of Rs.1500/- upto March, 2018; as per G.O.Rt.No.55, dated 12.5.2015 the maximum distance was indicated as 3 KMs in the plain areas; no minimum distance was prescribed therein; the convenience of the card holder was the main criteria for locating the fair price shop, but not that of the fair price shop dealer; and even according to the petitioner the lease period, in respect

of the earlier premises, had also come to an end by the end of March, 2018. The learned Single Judge found no merit in the writ petition, and accordingly dismissed the same.

Sri B. Vijaysen Reddy, learned counsel for the appellant-writ petitioner would draw our attention to G.O.RT. No. 55 dated 12.5.2015 in support of his submission that the guidelines, prescribed in the said Government Order, required, among others, the economic viability of the fair price shop dealer also to be kept in view while considering the number of cards to be attached to each fair price shop; since this factum of economic viability of the fair price shop dealer was not taken into consideration by the authorities concerned, while directing him to shift the fair price shop to ward No.22 in Gandhinagar colony, the impugned order was liable to be set aside; as G.O.RT. No. 55, dated 12.5.2015 prescribes the distance not to be more than 3 KMs, and as the impugned order itself records that the distance from each of these colonies is far less than 3 KMs, the appellant-writ petitioner could not have been directed to shift the fair price shop; while Gandhinagar is located at a distance of 1 KM from the subject fair price shop, Vishwamber colony, which is also tagged to the subject fair price shop, is located at a further distance of between 1.5 to 2.00 KMs; and consequently the unfounded complaint of a long distance by the residents of Gandhinagar colony, which is located just 1 KM away from the subject fair price shop, would not justify the fair price shop being shifted.

From the table, referred to in the order impugned in the writ petition, it is evident that the number of card holders from Vaddergalli is 160, from Gandhinagar colony 520, from Murshad Darga area 170 and from

Vishwamber colony 78. While both Vaddergalli and Murshad Darga area are located at a distance of 500 meters from the subject fair price shop, Gandhinagar colony is located at a distance of 1 KM and Vishwamber colony between 1.5 to 2.00 KMs. The fact remains that the number of card holders of the other three colonies put together is 408 which is far less than the number of card holders in Gandhinagar colony which is 520. The conditions stipulated in G.O.RT.No. 55, dated 12.5.2015 are not statutory in character, but are merely in the nature of administrative instructions which cannot, ordinarily, be enforced in proceedings under Article 226 of the Constitution of India in the light of the law declared by the Supreme Court in *J.R. Raghupathy Vs. State of A.P. and others*¹ and *Union of India Vs. SL Abbas*².

Even otherwise G.O.RT.No. 55, dated 12.5.2015 requires the economic viability of the fair price shop dealer to be kept in view only while considering the number of cards to be attached to each fair price shop. It is only to the extent of determining the number of card holders, to be attached to each fair price shop, is the economic viability of the fair price shop dealer required to be taken into consideration. Admittedly, in the present case, no exercise was even sought to be undertaken to reduce the number of cards attached to the writ petitioner's fair price shop, and he was asked to shift his shop only because Gandhinagar colony, consisting of 520 card holders, was located at a distance of 1 KM from the subject fair price shop.

It is no doubt true that para 2 (i) of G.O.RT. No. 515, dated 12.5.2015 stipulates that the distance between the residence of the card

¹ AIR 1988 SUPREME COURT 1681

² (1993) 4 SCC 357

holder to the fair price shop should not be more than 3 KMs in areas other than tribal areas. While the distance of the card holders in all the four colonies, attached to the writ petitioner's shop, appears to be far less than 3 KMs, the distance from two other colonies to which the writ petitioner caters to is only 500 meters, and the number of card holders in these two colonies put together is only 330, whereas Gandhinagar colony is located at a farther distance of 1 KM from the subject price shop and the number of card holders from the said colony is 520, which is one and half times more than the number of cardholders in the aforesaid two other colonies put together.

In his representation, submitted pursuant to the earlier order passed by this Court in WP No. 34998 of 2016, all that the petitioner has stated is that he had invested Rs.70,000/- for obtaining the shop in House No. 5-5-169 as a security deposit on a monthly rent of Rs.1500/- upto March, 2018; and if the fair price shop was shifted to Gandhinagar, ward No. 22 of Tandur Town he would suffer in the process. As has been noted by the learned Single Judge in the order under appeal, the lease for the subject shop was only till March, 2018 which period expired even by the date on which the learned Single Judge had passed the order under appeal. Except for these reasons, no other grounds have been urged by the writ petitioner in his representation regarding his economic viability being affected if the subject fair price shop was shifted to Gandhinagar colony.

As has been observed by the learned Single Judge, in the order under appeal, it is the convenience of the card holders which is paramount in distribution of essential commodities under the Public Distribution System; and since the number of card holders in Gandhingar colony, attached to the

subject fair price shop, is 520, the action of the respondents in directing the appellant-writ petitioner to shift the subject shop to Gandhinagar colony cannot be said to be illegal. Even otherwise in an intra-court appeal, preferred under Clause 15 of the Letters Patent, interference by the appellate Court would be justified only if the order under appeal suffers from a patent illegality. We do not find any such infirmity in the order passed by the learned Single Judge.

The Writ Appeal fails, and is accordingly dismissed. Miscellaneous applications, if any pending, shall stand closed. No order as to costs.

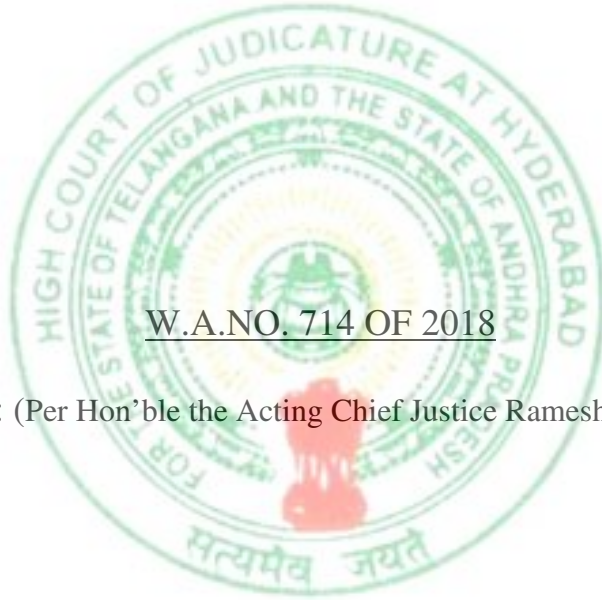
Dt. 4.6.2018
KR/GSN



RAMESH RANGANATHAN, ACJ

J. UMA DEVI, J

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