

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.18176 of 2018

ORDER :

Heard the counsel for petitioners, the learned Government Pleader for Agriculture for respondent nos.1 and 2, and Smt. G. Neeraja Reddy, counsel for respondent nos.3 and 4.

2. The 1st petitioner-Association is registered under the Andhra Pradesh Societies Registration Act, 2001 and its members are Commission agents who do business in vegetables in the Agricultural Market Committees.

3. The 2nd petitioner is a member of the said Society.

4. The petitioners herein contend that members of 1st respondent Association and the 2nd respondent possess licenses issued under Section 7 of the Andhra Pradesh (Agriculture Produce and Live Stock) Market Act, 1966 (for short, 'the Act'), and are doing business as Commission Agents in the notified area of respondent nos.3 to 5-Agricultural Market Committees.

5. After the State of Telangana was formed, certain amendments were made to this Act by the Telangana (Agriculture Produce and Live Stock) Market Act, (Amendment Act), 2016.

6. Section 7 of the principal Act was substituted and the amended Section 7 reads as under :

“7. Licensing of traders, commission agents, processors, direct purchase centers, private markets etc. and regulation of trade:-

(1) No person shall, within a notified area, set up, establish or use, or continue or allow to be continued, any place for the purchase, sale, warehousing, storage, weighment, curing, pressing or processing of any notified agricultural produce or products of livestock or for the purchase or sale of livestock except under and in accordance with the conditions of a license granted to him by the market committee:...

(1-A): There shall be a state wide single licence for the trader to be granted/renewed by the Director of Marketing or an officer authorized by him in the manner and in the form as may be prescribed. The existing trader licenses granted by the Agricultural Market Committee shall be converted into state wide single trader, license by the Director of marketing or the officer authorized by him, within six (6) months from the date of commencement of this Act until then the existing trader licenses granted by the Agricultural Market committees are deemed to have been the state wise single trader license.”

7. Thus, unless a license is obtained under Section 7, Commission Agents cannot do business within the notified area of the Market Yard.

8. Thereafter, G.O.Ms.No.58 Agriculture and Co-operation (MKTG.II) Department dt.27.12.2017 was issued amending the Rules framed under the Act. Rule 49, as amended, deals with grant or renewal of license of commission agents and others. *Inter alia*, the said Rule provides for giving of Bank guarantee by Commission Agents depending on their turnover [Sub-Rule (6)]. Sub-Rule (10) of Rule 49 states that license granted under the said Rule would be valid

for three years. Sub-Rule (11) of Rule 49 directs that application for renewal of licenses should be made one month before their expiry, and the licensing authority shall either renew or reject the application within (15) days on receipt of the application. Sub-Rule (12) permits filing of delayed renewal application also on payment of late fee of Rs.500/- for each day of delay beyond its date on expiry. Sub-Rule (14) states that a license issued under the Rule shall not be renewed if the licensee owes any dues to the purchaser or the seller or to the Agricultural Market Committee.

9. Subsequently, a Circular No.AMC/H/License/64/2017-18 dt.31.03.2018 has been issued indicating the documents to be submitted along with the renewal application for renewal of commission agent license by the 3rd respondent.

10. The petitioners contend that the licenses of members of the petitioners'-Association were due for renewal and they submitted applications for renewal along with all relevant documents as mentioned in the above Circular. The petitioners however point out that respondent Nos.4 and 5 have directed the petitioners also to submit: (a) Solvency affidavit with notary, (b) copy of sale deed and (c) an encumbrance certificate.

11. According to petitioners, the respondents cannot insist on submission of these documents for renewal of the license of the petitioners and that their action in doing so is illegal, arbitrary and

contrary to the provisions of the Act, and the Rules made thereunder. They therefore seek a declaration that the respondent nos.3 to 5 shall not insist on these documents for renewal of Commission agent licenses and a direction to respondent nos.3 to 5 to renew the licenses of the 1st petitioner and its members without insisting on filing of these documents.

12. According to the petitioners, an affidavit is also being insisted upon by respondent nos.3 to 5 containing details of the property owned by the applicant, how it was acquired and giving liberty to the Agricultural Market Committee to recover any dues found payable by the applicants by proceedings against the said property.

13. An affidavit given by one Shaik Mujeeb, a Commission Agent in Gudimalkapur Vegetable Market, notarized on 05.02.2018, is filed by the petitioners.

14. Counter-affidavit has been filed by 3rd respondent mentioning Rule 49 (as amended). It is contended that a solvency certificate issued by a Banker certifying on the solvency of applicant is mandatory, and it is stated that in the Circular dt.31.03.2018 issued by the 3rd respondent, inadvertently this requirement was omitted, although in the application to be filed under Form 5(c) for renewal, this requirement is mentioned. The respondents also provided some justification for insisting on Bank Guarantees by the applicants for Commission agent licenses. However, the petitioners are not

aggrieved by this requirement. Copy of the application in Form 5(c) is also filed.

15. The learned Government Pleader for Agricultural Market Committee, State of Telangana, also produced form of affidavit being insisted upon by respondent nos.3 to 5 which is required to be given by persons seeking renewal of Commission Agent license which corroborates the contention of petitioners that details of the property owned by the applicant, how it was acquired and giving liberty to the Agricultural Market Committee to recover any dues found payable by the applicants by proceedings against the said property, should be given by the applicants.

16. Though the learned Government Pleader for Agricultural Market Committee and counsel for 3rd respondent sought to contend that the respondents were justified also in insisting on an affidavit containing these particulars, I am of the opinion that the respondents cannot do so for the reason that such affidavit is not required to be given under the provisions of the statute and the Rules made under the statute. Property details of the applicants are in the nature of private information and the right to privacy of the applicants is also violated by coercing them to give such information. This cannot be permitted. The respondents, cannot, therefore coerce the applicants for renewal of Commission Agent licenses to submit such an affidavit as a condition precedent for renewal of their licenses.

17. Accordingly, the Writ Petition is partly allowed. The action of the respondents in insisting that applicants for renewal of Commission Agent licenses in Agricultural Market Committee notified areas should give details of the property owned by them and also give security of the said property to the Agricultural Market Committee by undertaking that dues payable by them to the Market Committee or to applicants or traders can be recovered from the said property, is declared as illegal and arbitrary and violative of Art.14, 19 (1) (g) and 21 of the Constitution of India. Such affidavits taken by the respondents cannot be relied upon by the respondents in any claim against the applicants for dues. The undertaking affidavits already collected by respondent nos.3 to 5 from members of the 1st petitioner-Association shall be returned by respondent nos.3 to 5 to the respective applicants and the respondents are restrained from insisting on such affidavits in future as a condition precedent for considering applicants for renewal of commission agent licenses. No order as to costs.

18. As a sequel, miscellaneous applications pending if any, in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 19.06.2018

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