

THE HON' BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.28378 of 2009

ORDER:

The petitioner challenges the order of the 1st respondent-Joint Collector, dated 16.12.2009, in the appeal filed by the 4th respondent.

Heard Sri A. Prabhakar Rao, learned counsel for the petitioner, and the learned Government Pleader for Civil Supplies for respondents 1 to 3; and Sri P. Prabhakar Reddy, learned counsel for respondent No.4.

Brief facts of the case are that the petitioner was appointed as a Fair Price Shop dealer on 02.07.2009, and his appointment came to be challenged by the 4th respondent by filing an appeal before the Joint Collector. The ground urged before the Joint Collector was that the petitioner is ineligible for appointment as Fair Price Shop dealer as she is barred on account of her husband being Sarpanch of the village.

Though the petitioner contended that there is no such bar operating against her appointment, particularly in terms of G.O.Ms.No.52 dated 18.12.2008, the 4th respondent places reliance on G.O.Ms.No.45, dated 19.07.2004 to the Control Order and also the Guidelines for selection and appointment of Fair Price Shop dealers, in support of his contention that the petitioner is ineligible and barred from appointment as Fair Price Shop dealership. Relevant portion of G.O.Ms.No.45 dated 19.07.2004, reads as under:

“All individuals holding any office like Sarpanch of Gram Panchayat, President of Mandal Praja Parishad, Chairman of Zilla Prja Parishad, Presidents of Cooperative Societies, Councilors or

Chairman of Municipality / Members of Zilla Parishad Territorial Constituency (ZPTC etc.) or their family members irrespective of reservation shall not be eligible for selection and appointment of F.P. Shop Dealership.”

It is the contention of the learned counsel for the petitioner that G.O.Ms.No.45, dated 19.07.2004, stands superceded by virtue of G.O.Ms.No.52 dated 18.12.2008, and there is no such prohibitory condition mentioned in G.O.Ms.No.52 dated 18.12.2008 incorporating the prohibition/bar contained in G.O.Ms.No.45 dated 19.07.2004. And, therefore, the petitioner is eligible for appointment in terms of G.O.Ms.No.52 dated 18.12.2008 and, therefore, the impugned order passed by the Joint Collector is unsustainable and illegal.

Though counter affidavit is filed by the 1st respondent, there is no specific denial in the counter with respect to inapplicability of G.O.Ms.45 dated 19.07.2004. In response to paragraph 5, 6, 7 and 8 of the writ affidavit averments, a reference has been made in the counter affidavit with respect to G.O.Ms.No.65, Consumer Affairs, Food and Civil Supplies (CS.I) Department, dated 15.12.2009, which reads as under:

“5, 6, 7 & 8: It is submitted that the contention of the petitioner is not tenable, as the Government of Andhra Pradesh have issued an amendment order in G.O.Ms.No.65, Consumer Affairs, Food and Civil Supplies (CS.I) Department, dt.15-12-2009 adding namely “17© Taking part in Political Activity : No Fair Price shop dealer / Nominated Retailer / Hawker shall take part in any political activity directly or indirectly in any General / Municipal / Panchayath Raj elections, hampering the public distribution system and the authorization granted to him / her under the Order shall be cancelled, if he / she is found involved in such political activity / canvassing.”

In the light of the stand taken by the 1st respondent in the counter affidavit, and there being no specific denial with respect to inapplicability of G.O.Ms.No.45 dated 19.07.2004, the reason quoted in the impugned order with respect to G.O.Ms.No.65 hardly needs any decision, as it is not the case of Joint Collector that the petitioner has either affiliated or participated in political matters, in the impugned order.

In those circumstances, G.O.Ms.No.45 dated 19.07.2004 has no application, which was the basis for setting aside the petitioner's appointment as Fair Price Shop dealer. Therefore, the impugned order dated 16.12.2009 passed by the 1st respondent-Joint Collector is liable to be set aside as the same being unsustainable.

Accordingly, the writ petition is allowed, setting aside the impugned order dated 16.12.2009 passed by the 1st respondent-Joint Collector. No costs.

Miscellaneous petitions, if any pending, shall stand closed.

CHALLA KODANDA RAM, J

23rd October, 2019

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