

Oleti Tirupathamma Vs District Supply Officer (City), Visakhapatnam and Others

Court: Andhra Pradesh High Court

Date of Decision: Oct. 5, 2001

Acts Referred: Constitution of India, 1950 " Article 19(1), 226
Essential Commodities Act, 1955 " Section 6A, 7, 8

Citation: (2002) 1 ALD 577 : (2002) 1 ALT 216

Hon'ble Judges: Satya Brata Sinha, C.J; Motilal B. Naik, J; A. Gopal Reddy, J

Bench: Full Bench

Advocate: B. Devanand, for the Appellant; Government Pleader for Civil Supplies, for the Respondent

Final Decision: Dismissed

Judgement

S.B. Sinha, C.J.

Doubting the correctness of a Division Bench decision of this Court in M. SHASHIKALA V COLLECTOR,

MAHABOONAGAR 1997 (2) ALD 379 (DB), this appeal, arising out of an order dated 8.1.2001 passed by a learned single Judge of this

Court in Writ Petition No.360 of 2001 has been referred to this Bench.

2. Before adverting to the question involved we may notice the basic fact of the matter. The petitioner is an authorised dealer of a Fair Price Shop

in Visakhapatnam, which was valid up to 31.3.2001. The Sub-Inspector of Vigilance Cell inspected the business premises of the petitioner (sic)

essential commodities found therein. A criminal case was registered for alleged violation of Clauses 4, 16(l)(a)(c)(d)(4) and conditions 4(i), 7, 8,

11 and 13 of authorisation issued under A.P. Scheduled Commodities (Regulation of Distribution by Card System) Order, 1973 and condition 3

of Form B Licence issued under A.P. Scheduled Commodities Dealers (Licensing and Distribution) Order, 1982 read with Section 7(i) and 8 of

the Essential Commodities Act (the Act). A proceeding was also initiated against the petitioner for confiscation of the seized Articles viz., rice and

sugar in terms of Section 6-A of the Act. The licence of the appellant-petitioner admittedly had not been suspended, but, despite the same, essential

commodities were not supplied to him for distribution amongst the card holders. Challenging the action of the authorities in not supplying the

essential commodities for distribution among the card holders, the appellant has filed the writ petition. The learned single Judge dismissed the writ

petition following the aforementioned Division Bench Judgment of this Court wherein it was held:

Inaction on the part of the Appointing Authority under the Control orders to initiate appropriate proceedings either for suspension or cancellation

of the authorisation in cases where the cases are registered against the dealers for the alleged violations u/s 6-A of the Essential Commodities Act,

itself is no ground for issuance of a writ of Mandamus directing the respondents to supply the essential commodities to such erring authorised

dealers. . . . Any such order by this Court exercise of its jurisdiction under Article 226 of the Constitution of India would amount to perpetration of

a legal fraud. In matters of this nature where the fair price shop dealers who are subjected to proceedings u/s 6-A of the Essential

Commodities Act cannot for their wrong doing seek the aid or assistance of this Court under Article 226 of the Constitution of India to compel the

authorities to supply essential commodities to them for distribution and allow them to function as fair price shop dealers.

3. The learned counsel appearing for the appellant has placed before us a large number of decisions in B. Satyanarayana Vs. The Joint Collector

(C.S.) and Others, , Gundala Rama Murthy Vs. The District Collector and Others, P. Hanumantha Rao Vs. The Chief Rationing Officer and

Another, and MD. SALEEM V REVENUE DIVISIONAL OFFICER 1994 (1) APLJ 427 which were referred to in M. SHAIKLA"s case. All

these decisions were rendered by his Lordship P.V. Reddy, J. Learned counsel also relied upon a decision rendered by his Lordship Syed Shah

Mohammed Quadri, J., in P. Lakshminarasiah Vs. The Joint Collector and Another,

4. In all the above decisions, their Lordships took the view that the proceedings u/s 6-A are quite distinct from the proceedings under Control

Order and the mere fact that action was initiated u/s 6-A of the Act does not automatically result in suspension or cancellation of the authorisation

of the Price Shop. It was further held that the authority under the Act are required to apply their mind independently to the charges against the

dealer and take its own decision instead of being led away by the initiation of the proceedings u/s 6-A of the Act. It was also held that it was open

to the competent authority, while deciding upon the action to be taken under the Control Order to take into account the relevant materials that

would have come to light from Section 6-A proceedings. The Division Bench agreed with the aforementioned decisions of the learned Judges in so

far as it was held that an independent decision had to be taken instead of mechanically following the order that may be passed u/s 6-A of the Act

and the authority under the Control Order cannot pass any orders of suspension on the ground of mere pendency of proceeding u/s 6-A of the

Act. But the Division Bench held that there is no protection of the right to carry on business under Article 19(1)(g) of the Constitution of India and

the Court has a duty to harmonise the exercise of the competing rights. The Division Bench observed:

Accordingly, in matters of this nature where the fair price shop dealers who are subjected to proceedings u/s 6-A of the Essential Commodities

Act cannot for their wrong doing seek the aid or assistance of this Court under Article 226 of the Constitution of India to compel the authorities to

supply essential commodities to them for distribution and allow them to function as fair price shop dealers. The proper order, to our mind, would

be to direct the Appointing Authority to pass appropriate orders in accordance with law on the basis of materials that may have come to light in the

proceedings initiated u/s 6-A of the Essential Commodities Act. Such a decision would have to be taken by the Competent Authority/Authorised

Officer within a reasonable time from the date of receipt of information about the initiation of proceedings against the dealer u/s 6-A of the Essential

Commodities Act

5. Mr. Nanda R. Rao learned Counsel appearing on behalf of the respondents, however, submitted that the exercise of jurisdiction of this Court

under Article 226 of the Constitution of India being discretionary the Court should refrain from exercising its jurisdiction in a case of this nature. In

support of the said contention, she relied upon the decisions of the Apex Court in Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward,

Kanpur and Another, , State of West Bengal and Others Vs. Calcutta Hardware Stores and Others, and a Division Bench decision of this Court in

B. Maheswaramma v. M. Ramasubbamma 1995(3)ALD461.

6. Section 3 of the Act confers power on the Central Government to control or regulate production, supply, and distribution etc., of essential

commodities. Section 6-A deals with confiscation of foodgrains, edible oils seeds, edible oils seized in pursuance of an order made u/s 3 of the

Act. Section 7 provides for penalties for contravention of any order made under Sections. u/s 8 any person who attempts to contravene, or abets a

contravention, of any order made u/s 3 shall be deemed to have contravened that order.

7. Clause 3 of A.P. Scheduled Commodities (Regulation of Distribution by Card System) Order, 1973, issued by the State Government in

exercise of the powers conferred u/s 3 of the Act, provides for issuance of authorisation to any institution or person, subject to such preference

and reservation, as may be prescribed by the Government from time to time, to obtain and supply scheduled commodities in accordance with the

provisions of the Order. Clause 3(5) provides for issue or renewal of authorisation. Clause 14 empowers the authority to enter premises, inspect,

search and seize stocks of scheduled commodities etc. Clause 16 provides for the conditions to be observed by the authorised fair price shop

dealer which inter alia includes the duty to maintain quality and quantity of essential commodities. Clause 16(4) provides for suspension or

cancellation of the authorisation issued under the Order for any contravention of the provisions of the order or any instructions, directions or orders

issued by the Government or Commissioner of Civil Supplies or the Collector or Chief Rationing Officer concerned.

8. The authorisation in Form-11 provides various conditions, which shall be adhered to by the dealer. The Andhra Pradesh Scheduled

Commodities Dealers (Licensing and Distribution) Order, 1982 issued in exercise of the powers conferred u/s 3 of the Act deals with issuance of

licenses to dealers, renewal of licences, cancellation or suspension of licences. Clause 8 of the said order deals with cancellation or suspension of a

licence for contravention of any of the terms or conditions of licence.

9. Further, condition No.3 of the licence issued in Form-B provides that the licensee shall maintain a register of daily accounts in relation to

opening stock on each day, quantities received on each day, quantities delivered or otherwise removed on each day etc. When a licence is granted

to a dealer, he has a right to carry on the business subject to compliance of the provisions of the Order made u/s 3 of the Act and conditions of

licence issued to him. No dealer, without complying with the procedure laid down under the Order, can be deprived of his right to carry on his

business. Right to carry on business, subject to the provisions of law, can be regulated or prohibited, but while prohibiting carrying of such business

directly or indirectly, the, conditions precedent laid down under the statute must be fulfilled.

10. It is no gainsaying that suspicion howsoever grave it may be is no substitute for proof. Similarly, allegation howsoever serious may be cannot

by itself be taken as a presumptive value so as to arrive at a finding that an offence has been committed. Mere pendency of a criminal case by itself

cannot be a ground to take recourse to other prohibitory measures involving serious consequences unless there exists any provisions in this regard

and/or unless the appropriate authority applies its mind with a view to finding out as to whether the conditions precedent for application of a statute

has been made out.

11. Once the Division Bench agreed with the decisions rendered by the learned Judges of this Court, as referred to hereinbefore, in our opinion, a

general proposition of law that in no case discretionary jurisdiction should be exercised by this Court under Article 226 of the Constitution of India

could not have been laid down. Exercise of discretionary jurisdiction under Article 226 would depend upon facts and circumstances of each case.

The aspect of competing rights, as observed by the Division Bench, has to be considered in each case. In a case of this nature, the Court should

also take into consideration the larger public interest, namely whether by reason of non-supply of the food grains to an authorised dealer, the card

holders as such are being deprived of a beneficent scheme undertaken by the State. The Court, while exercising the discretion must have interest of

the card holders uppermost in mind.

12. In *Dwarka Nath v. I.T. Officer* (supra), the Apex Court was dealing with a case under Income Tax Act. The Apex Court held that though the

nature of jurisdiction of the High Court is wide, it couldn't function arbitrarily. It was held that there are some limitations implicit in the Article and

others may be evolved to direct the Article through defined channels. No law as such has been laid down defining the jurisdiction of this Court in a

case of this nature. It was in the fact situation of that case, it was held that the case falls directly within the confines of the certiorari jurisdiction as

understood in England. We may not refer to the other decisions of the Supreme Court where divergent view has been taken, as the same is not

necessary for the purpose of this case.

13. In *STATE OF WEST BENGAL V CALCUTTA HARDWARE STORES* (supra) the Apex Court was dealing with an ex parte order

passed by a Division Bench of the Calcutta High Court setting aside an interlocutory order passed by a learned single Judge, in terms whereof, the

Division Bench of the Calcutta High Court directed the release to the respondents therein of more or less 600 metric tonnes of tin plates of the

value of 60 lakhs, seized from them for alleged contravention of item 24, Schedule I to the West Bengal Declaration of Stocks and Prices of

Essential Commodities Order, 1977 upon furnishing of bank guarantee of Rs.5 lakhs in the form of fixed deposit receipts and also on furnishing

security of immovable property. The Apex Court, inter alia observed that the order should not be passed for a mere asking and jurisdiction should

be exercised with great circumspection. In our considered opinion, the above decision has no application to the facts and circumstances of this

case.

14. *B. MAHESWARAMMA V. M. RAMASUBBAMMA* (supra) was again a case where a Division Bench of this Court was dealing with an

interim order wherein it was held that a fair price shop dealer who has been subjected to a disciplinary action should not be allowed to function

under the interim order of the Court.

15. It is one thing to say that when an order has been passed by the authority, the Court may pass an interim staying the operation thereof as a

result whereof the dealer may carry on business, but it is another thing to say that a deliberate action in not supplying the essential commodities to

an authorised dealer even though his authorisation or licence has not been suspended, should be allowed by (his Court by refusing to grant a writ

although in law he is entitled to.

16. A statutory authority, it is trite, must act within the four corners of the statute in terms of the statutory orders and procedure laid down to

suspend the licence. As already noticed hereinbefore, the authorities under the relevant orders have power to suspend the authorisation or licence

of the dealer. Without applying its mind and without taking recourse thereto, the Court should not normally permit the authorities, unless

extraordinary situation exists, to allow them to do something indirectly, which they cannot do it directly. If a broad proposition to this effect is laid

down, the same, in a given case may amount to abuse of the process of law. The High Court while exercising its jurisdiction under Article 226 of

the Constitution of India, acts sentinel qui vive and thus it has to protect the citizen from arbitrary and capricious action of the executive. If the

licensing authority themselves upon application of mind come to the conclusion that the irregularities committed by the fair price shop dealer would

warrant suspension of his licence, it may do so. But, in our considered opinion, the authority without taking recourse to the said action, cannot,

refuse to supply the essential commodities. In the event an order of suspension of licence is passed, the authorities will have to make an alternative

arrangement. But, in a case of this nature, the card holders would be the worst sufferers inasmuch their essential commodities would not be

supplied to them at all.

17. For the reasons aforementioned we do not approve the observations made by the Division Bench of this Court in M. SHASHIKALA v.

COLLECTOR, MAHABOONAGAR (supra) insofar as they contained in para 17 of the Judgment is concerned and hold that the discretionary

jurisdiction of this Court may be refused to be exercised having regard to the facts and circumstances of each case and no general Rule of law can

be culled out therefrom.

18. It is trite that the Court at the first instance shall allow a statutory authority to perform its duties; it shall not usurp the function of the statutory

authority unless there exists any compelling reason therefor. In STATE OF WEST BENGAL v. NURUDDIN MALLICK, the Apex Court held:

Submission for the respondents was that this Court itself should examine and decide the question in issue based on the material on record to set at

rest the long-standing issue. We have no hesitation to decline such a suggestion. The Courts can either direct the statutory authorities, where it is

not exercising its discretion, by mandamus to exercise its discretion, or when exercised, to see whether it has been validly exercised. It would be

inappropriate for the Court to substitute itself for the statutory authorities to decide the matter.

19. In this case, however, as the period of licence has already expired, no writ of Mandamus, as has been prayed for, can be issued. The Writ

Appeal is, therefore, dismissed. No order as to costs.

A. Gopal Reddy, J

20. I have had the opportunity and benefit of going through the judgment prepared by the Honourable the Chief Justice. I fully agree with the

conclusions for dismissal of the writ appeal. Since we are dismissing the writ appeal on the ground that the licence has already expired, no writ of

Mandamus as such can be issued, it is unnecessary to express any opinion about the correctness or otherwise of the Division Bench decision of

this Court in M.Shashikala v. Collector, Mahaboobnagar (supra) and the same is left open to be considered in appropriate case.

21. The writ appeal is accordingly dismissed.