

(2010) 11 AP CK 0032

Andhra Pradesh High Court

Case No: Writ Petition No. 16482 of 2008

R. Varalakshmi

APPELLANT

Vs

The Sub Collector and Another

RESPONDENT

Date of Decision: Nov. 11, 2010

Acts Referred:

- Road Transport Corporations Act, 1950 - Section 2, 3, 34, 4, 5

Citation: (2011) 1 ALD 804

Hon'ble Judges: Noushad Ali, J

Bench: Single Bench

Advocate: Kowturu Vinayakumar, for the Appellant; G.P. for Civil Supplies, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Noushad Ali, J.

The writ petition is filed to declare the proceedings in Rc.A7/1781/2007, dated 14.7.2008 issued by the 1st Respondent viz Sub Collector, Vijayawada, Krishna District, temporarily suspending the authorization of the Petitioner's Fair price shop pending further enquiry purportedly under Clause 5 (5) of A.P. State Public Distribution System (Control) Order, 2008 and 3 (4) of the Annexure appended to the said Control Order, as illegal and without jurisdiction.

2. The Petitioner is a Fair price shop dealer in respect of shop No:16 of Morsumilli village, Mylavaram Mandal, Krishna District.

3. The said authorization was granted to her by orders in Rc.A/9095/93, dated 20.11.1995 of the Sub Collector, Vijayawada under the Control Order then in force viz A.P. Scheduled Commodities (Regulation of Distribution by Card System) Order, 1973. Based on some undisclosed complaint that the husband of the Petitioner viz

Ravi Nageswararao was working as a Driver in the A.P.S. R.T.C (In short "Corporation") the matter was referred to the Tahsildar, Mylavaram for enquiry and report. The said Tahsildar submitted a report that the husband of the Petitioner has been working as a Driver in the A.P.S. R.T.C on regular basis since 1.8.1991. Based on the said report, the 1st Respondent herein passed the impugned order stating that the Petitioner concealed the said fact and as her husband is a Driver, she is not entitled for the appointment as dealer as per Clause 12 (iii) of G.O. Ms. No:53, Consumer Affairs, Food & Civil Supplies (C.S.I) Department, dated 6.10.2003.

4. It is on this alleged violation, the 1st Respondent suspended the authorization under the impugned order.

5. Heard the learned Counsel for the Petitioner and the learned Government Pleader for the Respondents.

6. The learned Counsel contends that the husband of the Petitioner is an employee of the Corporation, but not an employee of the Government nor an employee of Civil Supplies Corporation and hence the Petitioner is not disqualified for grant of authorization to run a Fair Price Shop. He therefore contends that the above said G.O has been wrongly invoked.

7. He also contends that the Petitioner was appointed in the year 1995 whereas the guidelines issued in G.O. Ms. No:53, Consumer Affairs, Food & Civil Supplies (C.S.I) Department, were issued on 6.10.2003. Hence, any disqualification contained in the guidelines cannot be retrospectively applied to the Petitioner.

8. On the other hand, the learned G.P submits that the husband of the Petitioner is a Driver in A.P.S.R.T.C and the A.P.S.R.T.C is a State Government undertaking. Therefore, the disqualification has been rightly invoked and the impugned order is not assailable.

9. Admittedly, the husband of the Petitioner is a Driver in the A.P.S.R.T.C and the Petitioner was appointed as a dealer in the year 1995 under A.P. Scheduled Commodities (Regulation and Distribution by Card System) Order 1973, which was in force at that point of time.

10. There is no dispute that there was no prohibition under the 1973 Control Order for appointing persons whose relatives were working as Government employees or in the State Government undertakings. Be that as it may.

11. The State Government issued guidelines in G.O. Ms. No:53, Consumer Affairs, Food & Civil Supplies (C.S.I) Department, dated 6.10.2003 for selection and appointment of Fair price shop dealers under the A.P. State Public Distribution System (Control) Order, 2001. Clause-4 of the said G.O provides that the guidelines annexed should come into force with immediate effect. The annexure provides the procedure and the qualifications required for appointment as a Fair price shop dealer.

12. Clause 12 (i) and (ii) of the Annexure to the G.O to the extent is extracted below :

(i) All individuals holding any public office like Sarpanch of Gram Panchayat, President of Mandal Praja Parishad, Chairman of Zilla Praja Parishad Presidents of Co-operative Societies, councillors or Chairman of Municipality, Members of Zilla Parishad Territorial Constituency (ZPTC) etc "irrespective of the reservation shall not be eligible.

(ii) xxxxxxxxxxxxxxxxxxxxxx

(iii) Close relatives of Government employed specially those working in Civil Supplies Department of Revenue Department or the Civil Supplies Corporation or Village Administrative Officer of the village shall not be appointed as F.P. Shop Dealers.

(iv) to (xiii) xxxxxxxxxxxxxxxxxxxxxx

13. The 1st Respondent has invoked Clause 12 (iii) against the Petitioner. As per the said Clause, it is indisputable that the prohibition for appointment of a F.P. Shop authorization applies to the close relatives of Government employees, more emphatically to those working in Civil Supplies Department or Revenue Department or Civil Supplies Corporation or Village Administrative Officer of the village.

14. A plain reading of the said Clause unequivocally shows that it applies to the said categories named therein alone and not to other employees of other organizations. But the husband of Petitioner is neither a Government employee nor an employee in the Civil Supplies Department or Revenue Department or the Civil Supplies Corporation or Village Administrative Officer of the village. The 1st Respondent seeks to invoke the prohibition presumably on the ground that the A.P.S. R.T.C is a State Government undertaking and therefore, an employee working in the said undertaking should be treated as a Government employee.

15. u/s 2 of the Road Transport Corporation Act, 1950, "Corporation" means a Road Transport Corporation established u/s 3, which reads as under :

Establishment of Road Transport Corporations in the States :The State Government having regard to :

(a) the advantages offered to the public, trade and industry by the development of road transport;

(b) the desirability of co-ordinating any form of road transport with any other form of transport;

(c) the desirability of extending and improving the facilities for road transport in any area and of providing an efficient and economical system of road transport service therein, may, by notification in the Official Gazette, establish a Road Transport Corporation for the whole or any part of the State under such name as may be specified in the notification.

16. u/s 4 of the Act every Corporation shall be a body corporate by the name notified u/s 3 having perpetual succession and a common seal, and shall by the said name sue and be sued.

17. u/s 5 of the Act, the general superintendence, direction and management of the affairs and business of a Corporation shall vest in a Board of Directors which, with the assistance of its committees and Managing Director, may exercise all such powers and do all such acts and things as may be exercised or done by the Corporation.

Although, a Corporation is thus established by the State Government, by virtue of the provisions of Sections 4 and 5 of the Act the power to manage the affairs of the Corporation vests in a Board of Directors but not in the State Government.

18. u/s 34 of the Act the State Government may, after consultation with a Corporation established by such Government, give to the Corporation general instructions to be followed by the Corporation, and such instructions may include directions relating to the recruitment, conditions of service and training of its employees, wages to be paid to the employees, reserves to be maintained by it and disposal of its profits or stocks. But such a power does not affect the separate legal entity of the Corporation as provided in Section 4 of the Act.

19. On a consideration of the aforesaid provisions, it is evident that the A.P.S.R.T.C. can neither be considered as Government nor as a department of the Government, and by no stretch of imagination an employee working in the A.P.S.R.T.C can be treated as a Government employee.

20. The contention of the Respondents that the husband of the Petitioner should be treated as a Government employee, is therefore, misconceived. Indisputably, there was no provision under the 1973 Control Order prohibiting the relatives of a Government employee or other employees for granting the F.P. shop authorization.

21. The learned G.P has placed the guidelines issued by the State Government for the first time in G.O. Ms. No:198-F, C.S & C.A (C.S. IV) Department, dated 5.2.1996. Clause 10.2 of the said guidelines are on the same parameters of Clause 12 (iii) of the guidelines issued in G.O. Ms. No:53, dated 6.10.2003.

Therefore, as per the guidelines issued in both the aforesaid G. Os viz. G.O. Ms. No:198, dated 5.12.1996 and G.O. Ms. No:53, dated 6.10.2003, except those enumerated in the said clause, relatives of no other employees are disqualified for appointment as a F.P shop dealer.

22. Admittedly, the Petitioner was appointed in the year 1995, by which point of time, none of the Government orders referred to above were in existence. The said guidelines do not provide for any retrospective application. In fact, as mentioned above, clause-4 of G.O. Ms. No:53 provides that the guidelines issued therein shall come into force with immediate effect, which only means that the said guidelines

are prospective in nature.

23. In the analysis as made above, it must be held that the impugned order is wholly without jurisdiction and it is accordingly liable to be set aside.

24. The writ petition is allowed and the impugned order is set aside. No order as to costs.