

(2014) 12 AP CK 0049

Andhra Pradesh High Court

Case No: Writ Petition No. 36058 of 2014

Chinnareddigari Sambasiva
Reddy

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision: Dec. 3, 2014

Acts Referred:

- General Clauses Act, 1897 - Section 16

Citation: (2015) 1 ALD 645 : (2015) 1 ALT 472

Hon'ble Judges: C.V. Nagarjuna Reddy, J

Bench: Single Bench

Advocate: S.V. Muni Reddy, Advocate for the Appellant

Judgement

@JUDGMENTTAG-ORDER

C.V. Nagarjuna Reddy, J.

This Writ Petition is filed for a Mandamus to set aside proceedings in Roc. No. 296/2014, dated 08.11.2014, of respondent No. 4, whereby he has temporarily appointed respondent No. 5, who is a neighbouring fair price shop dealer, as the fair price shop dealer for distribution of essential commodities to the card holders attached to the petitioners fair price shop from the month of December, 2014.

2. I have heard Sri S.V. Muni Reddy, learned counsel for the petitioner and learned Assistant Government Pleader for Civil Supplies (Andhra Pradesh).

3. The petitioner was appointed as the fair price shop dealer of Shop No. 43 of Veerakanellore Village, Gangadhara Nellore Mandal, Chittoor District in the year 1981 and since then, he has been functioning as such. The petitioner alleged that on 31.10.2014, respondent No. 4 has called him to his office and informed him that there are complaints against him; that respondent No. 4 has pressurized him to submit his resignation; that succumbing to the pressure exerted by respondent No.

4, he has submitted his resignation unwillingly; and later on, he has requested respondent Nos. 3 and 4 not to act upon the forcible resignation. Subsequently, the petitioner has received the impugned proceedings, wherein respondent No. 4 has made a temporary arrangement.

4. In pursuance of the direction issued by this Court, learned Assistant Government Pleader for Civil Supplies (Andhra Pradesh) produced the record.

5. A perusal of the record shows that the petitioner has signed on an undated statement, wherein it is mentioned that the petitioner has been running the fair price shop for the last 33 years; that his health has deteriorated and therefore, respondent No. 4 may appoint another dealer in his place. A seal dated 30.10.2014 was affixed on the said document and it also contains initial dated 31.10.2014 in green ink. The record contains a letter, dated 05.11.2014, addressed by the Mandal Revenue Inspector to respondent No. 4, the contents of which show that the petitioner has submitted his resignation to respondent No. 4 on 31.10.2014 and that in order to avoid inconvenience to the card holders, the Mandal Revenue Inspector has recommended appointment of respondent No. 5 as temporary fair price shop dealer. Curiously, the Mandal Revenue Inspector has enclosed to the said letter the purported resignation letter of the petitioner.

6. Respondent No. 4 has issued the impugned proceedings, wherein he has temporarily appointed respondent No. 5 as the fair price shop dealer for distribution of essential commodities to the card holders attached to the petitioners fair price shop from the month of December, 2014. The said proceeding refers to the purported resignation of the petitioner and the report, dated 05.11.2014, of the Mandal Revenue Inspector, Gangadhara Nellore.

7. Respondent No. 4 has also addressed letter in Roc. No. A/296/2014, dated 08.11.2014, wherein he has sought ratification of his action by respondent No. 3 in accepting the petitioners resignation and also temporarily appointing respondent No. 5.

8. On 25.11.2014, the petitioner filed this Writ Petition. On 26.11.2014, an office note was circulated to respondent No. 3, wherein it was brought to his notice that respondent No. 4 has accepted the petitioners resignation and simultaneously, made alternative arrangement by attaching the petitioners fair price shop to the adjacent fair price shop dealer. The note has requested ratification of respondent No. 3. On the same day, respondent No. 3 has ratified the action of respondent No. 4.

9. In his affidavit, the petitioner has seriously alleged that respondent No. 4 has forcibly secured his resignation.

10. The Andhra Pradesh State Public Distribution System (Control) Order, 2008 (for short the Control Order) does not contain any specific provision for acceptance of

resignations of the fair price shop dealers.

11. However, the Form of Authorization (Form-II) contains Clause-17 which reads as under:

The holder of this authorization shall work for a minimum period of five years unless suspended or cancelled by competent authority. Resignations etc., seeking to leave the dealership shall not be accepted within this minimum period of five years.

12. The above reproduced Clause does not specify as to the authority which is competent to accept the resignation of the fair price shop dealer. In the absence of specification of the authority by the Control Order or by the form of authorization and applying Section 16 of the General Clauses Act, 1897, it is the appointing authority which alone can have the power to accept the resignation. Admittedly, respondent No. 3 is the appointing authority. Respondent No. 4 can only forward the resignation of the petitioner for acceptance of respondent No. 3. In my opinion, respondent No. 4 has far too exceeded his jurisdiction in purporting to accept the petitioners resignation and seeking ratification of respondent No. 3. By purporting to ratify the action of respondent No. 4, respondent No. 3 has abdicated his power to consider and take an appropriate decision on the resignation of the petitioner.

13. Interestingly, without even waiting for an order from respondent No. 3, respondent No. 4 has acted with undue haste by issuing the impugned proceedings.

14. From the dates noted hereinbefore, it is evident that on 25.11.2014, when the petitioner has filed the present Writ Petition, an office note was circulated to respondent No. 3 on 26.11.2014 and on the same day, he has ratified the action of respondent No. 4. The hurry with which respondent Nos. 3 and 4 acted raises serious suspicion about their bona fides.

15. A further interesting feature of this case is that if the petitioner has submitted his resignation on 31.10.2014 to respondent No. 4, it is not understandable as to how Mandal Revenue Inspector has forwarded his resignation to respondent No. 4 on 05.11.2014.

16. Ordinarily, no fair price shop dealer would like to quit his assignment. If such extra-ordinary desire is expressed by any dealer, it is incumbent upon the appointing authority to put the dealer on notice before accepting the resignation as, foul play by vested interests cannot be ruled out. Therefore, I cannot appreciate the action of respondent No. 3 in purporting to ratify the hasty and unauthorised action of respondent No. 4 without even trying to get the confirmation from the petitioner as to whether he has sent his resignation out of his free will or the same is secured by any vested interests by force. The failure of respondent No. 3 to make an enquiry in this regard by issuing notice to the petitioner vitiates the entire action of respondent Nos. 3 and 4 in easing out the petitioner from the fair price shop dealership. As respondent No. 3 has not properly exercised his jurisdiction in acting

on the purported resignation of the petitioner, his action culminating in acceptance/ratification of resignation of the petitioner is declared as illegal and the impugned order is, accordingly, set aside. As the petitioner is inclined to continue as the fair price shop dealer, he shall be permitted to continue as such under the authorization held by him.

17. The Writ Petition is, accordingly, allowed.

18. As a sequel, WPMP. No. 45128 of 2014 is disposed of as infructuous.