

THE HON'BLE SRI JUSTICE C.V.BHASKAR REDDY
WRIT PETITION Nos.23343, 38506, 38515, 41683, 38349 & 38459 of 2022
and
8587, 3485 & 1287 of 2023

COMMON ORDER:

The petitioners in this batch of writ petitions are fair price shop dealers. Their grievance is that the impugned orders in the present writ petitions were issued for rationalisation of existing fair price shops and creation of new fair price shops in the respective Districts without following due process of law and contrary to G.O.Rt.No.55, Consumer Affairs, Food & Civil Supplies (CSI-CCS) Department, dated 12.05.2015 and the various orders with regard to economic viability criteria, which is illegal and arbitrary.

2. Since the controversy involved in the present cases is similar, all these writ petitions were heard together and they are being disposed of by a common order.

3. Briefly stated the facts of W.P.No.23343 of 2022 are as follows:-

The case of the petitioners is that they are eking out their livelihood by running the respective fair price shops allotted to them. While so, respondent No.3 herein viz., the District Collector (CS), Khammam, has issued impugned proceedings vide Rc.No.D/43/2021 dated 31.01.2022 for rationalisation of existing fair price shops and creation of new fair price shops. It is the further case of the petitioners

Clause 2(ii) of G.O.Rt.No.55 dated 12.05.20215, Consumer Affairs, Food & Civil Supplies (CSI-CCS) Department, envisages that the economic viability of the fair price shop dealer shall be kept in view while considering the number of cards to be attached to each fair price shop. However, by virtue of the impugned order issued by respondent No.3 for rationalisation of existing fair price shops and in view of installation of e-pops machine etc., number of cards which have been originally attached to the fair price shops will be reduced which would not only cause great hardship to the fair price shop dealers, there would be no economic viability for the fair price shop dealers and they would not be in a position to distribute the essential commodities in the absence of economic viability. Therefore, the policy enunciated by respondent No.3 in the impugned order is against public interest and the same is illegal and arbitrary.

4. A counter affidavit has been filed by respondent No.2 stating *inter alia* that the Government has considered that it is necessary to rationalise the number of cards in the fair price shops in the State, keeping in view the accessibility i.e., the distance to be traversed by the card holder from his residence to the fair price shop, economic viability of the fair price shop etc. Accordingly, the Government has issued guidelines vide G.O.Rt.No.55, Consumer Affairs, Food & Civil

Supplies (CSI-CCS) Department, dated 12.05.2015, which reads as follows:-

“GOVERNMENT OF TELANGANA
ABSTRACT

Civil Supplies – Food Security Cards – Rationalization of number of cards in fair shops – Orders- Issued.

CONSUMER AFFAIRS, FOOD & CIVIL SUPPLIES (CSI-CCS) DEPARTMENT

G.O.RT.No.55

Dated 12-05-2015

O R D E R:

Government have considered it necessary to rationalize the number of cards in fair price shops in the State, keeping in view the accessibility i.e., the distance to be traversed by the card holder from his residence to the fair price shop, economic viability of the fair price shop etc.

2. Government, therefore, in supersession of all the guidelines issued in connection with the number of cards each fair price shop should have in different areas, issue the following guidelines.

- i) The distance to be covered by the card holder from his residence to the fair price shop should not be more than 3 KM in areas other than tribal areas and it shall be one KM in tribal areas.
- ii) The economic viability of the fair price shop dealer shall be kept in view while considering the number of cards to be attached to each fair price shop.
- iii) In tribal areas/Thandas, a fair price shop can be created, for the convenience of the cardholders of that area, with less than the number of cards indicated below but, it shall be ensured that there is economic viability.
- iv) The fair price shops run by Corporations and GCC shall be attached with the number of cards depending upon the accessibility of the cardholder from his residence to the fair price shop. The convenience of the cardholder should be of importance as GCC/Corporations deal with other Commodities also in DR Depots/other areas respectively.
- v) In urban areas, the cards to the fair price shops shall be attached ward-wise and on distance criterion.

vi) It is also necessary to ensure that the fair shops should have adequate storage capacity to store commodities particularly rice, in the wake of increase due to 6 kg per person.

vii) While attaching cards, the gross income on the commodities supplied, expenses like mulgi rent, wages to helper etc., if any, the net income etc. should be kept in view.

3. Government, after considering all the above aspects at the State level, decided that the following number of cards can be attached to fair price shops in different areas.

- | | | | |
|----|--|---|--------------------|
| a) | In GHMC area | - | 1000 to 1200 cards |
| b) | Other Corporations | - | 800 to 1000 cards |
| c) | All Municipalities and
Nagar Panchayats | - | 600 to 800 cards |
| d) | Rural areas | - | upto 500 Cards |

4. The above decision is taken to ensure that there is no unwieldy number of cards in the FP Shops, which makes the fair price shop dealers to lift the stocks and deliver on time, difficult.

5. All the District Collectors, are informed that the above instructions are illustrative. However, keeping in view the local situation, need to have the fair price shop, based on convenience of the card holders, financial capacity to lift the stocks etc., District Collectors, may slightly differ from the above norms and attach cards. For example, in case in a village, the number of cards attached to a FP shop is above 800 and it has become unwieldy for any reason, it can be divided into two with equal number of cards. However, the same shall be informed to the Commissioner, Civil supplies along with reason for doing so.

6. This Order shall come into force with immediate effect.

(BY ORDER AND IN THE NAME OF GOVERNOR OF TELANGANA)

DR. RAJAT KUMAR

EX-OFFICIO SECRETARY TO
GOVERNMENT"

5. Further it is stated in the counter affidavit that in the said G.O.Rt.No.55 dated 12.05.2015, the Government has given certain relaxations to all the District Collectors that keeping in view the local

situations, need to have the fair price shop, based on convenience of the card holders, financial capacity to lift the stocks etc., they may slightly differ from the above norms and attach cards to the fair price shop dealers. It is also stated that the Commissioner of Civil Supplies issued instructions on 29.06.2021 to the effect that due to increase of population, units, quantity and formation of new Gram Panchayats and also in tribal areas, there must be increase of fair price shops and as per the policy laid down by the Government to provide cardholders accessibility and to reduce the distance from fair price shops to the residence of the cardholders, the Revenue Divisional Officers were directed to follow scrupulously the guidelines issued in G.O.Rt.No.55 dated 12.05.2015. In terms of the said G.O., all the Revenue Divisional Officers were instructed to communicate a list of fair price shop cards to the District Supplies Officer, Khammam in order to create new fair price shops in e-PDS portal after obtaining information from the concerned Tahsildars. Further it is stated in the counter affidavit that rationalisation of fair price shops is approved taking into consideration of accessibility and economic viability of fair price shop dealer, storage capacity, local situation etc. and also taking into consideration increase of population and creation of new Gram Panchayats and Gram Panchayats in tribal areas. It is also stated that after formation of Telangna, there is a change in the PDS system

and in order to cater to the needs of the people, the Government has made several administrative changes i.e., formation of new gram panchyats, Mandals, Districts and creation of Municipalities and Municipal Corporations. During 2014-15 to 2015-16, the number of ration cards added were about 6,28,505 and presently as on 09.11.2022 the total cards existing in the State of Telangnaa are 90,00,698 catering to 2,83,39,310 people. Since the District Collectors are implementing the guidelines framed in G.O.Rt.No.55 dated 12.05.2015 and as respondent No.2 has issued circular proceedings dated 29.06.2021 in implementation of the guidelines and action has been initiated by the District Collectors and the Chief Rationing Officer to examine the feasibility of creation of new fair price shops and to furnish the information to the Commissioner's office, the order issued by respondent No.2 is in accordance with the guidelines issued by the Government and therefore, there is no necessity to issue separate individual notices to each fair price shop dealers as the very fair price shops were allotted in terms of the guidelines issued in G.O.Rt.No.55 dated 12.05.2015. Therefore, the action of the respondents in issuing the impugned order does not call for interference of this Court exercising powers under Article 226 of the Constitution of India and as such prayed for dismissal of the writ petition.

6. Learned counsel for the petitioners contended that as per the proceedings issued by respondent No.2 vide CCS Ref No.PPI(1)/92/2021 dated 25.03.2021 each fair price shop should have 500 to 1000 cards in rural areas, 1000 to 1500 cards in municipalities, 1500 to 2000 cards in corporations and 2000 to 3000 cards in GHMC. However, without following the said Circular Memo issued by respondent No.2, unilateral decision has been taken and impugned order was issued by respondent No.3, which would cause great hardship to the petitioners. He further contended that no enquiry has been conducted by the respondents as to whether there exists any necessity for bifurcation/rationalisation of the existing fair price shops and without taking into consideration the said facts, and without even issuing prior notice to the existing fair price shop dealers in terms of G.O.Ms.No.55 dated 12.05.2015 and also the circular instructions issued by respondent No.2, the impugned order has been issued by respondent No.3, which suffers from violation of principles of natural justice. Learned counsel also submitted that even though the fair price shop dealers do not have any fundamental right, once shop has been allotted certain rights are created for running of fair price shops subject to certain conditions and regulations. Therefore, they are entitled to object for bifurcation/rationalisation of the fair price shops that too when the authority is trying to violate the

guidelines. He further submitted that once a fair price shop dealer has been granted authorisation, he is entitled to run the fair price shop by observing the conditions stipulated in the authorised conditions and any action affecting their rights will certainly result in violation of their civil rights. Therefore they are entitled to agitate their rights on the ground of economic non-viability if the cards are taken out. Learned counsel contended that since the respondents have taken a decision in violation of the guidelines issued in G.O.Rt.No.55 dated 12.05.2015 for bifurcation/rationalisation of fair price shops and the ground on which the bifurcation/rationalisation is sought to be done does not exist, the petitioners are entitled to raise their objections and since the respondent authorities have not issued any notice before bifurcation/rationalisation, it amounts to violation of principles of natural justice and therefore, the impugned order is liable to be set aside on the ground of violation of principles of natural justice.

7. Per contra, Mr. A. Sanjeev Kumar, learned Special Government Pleader appearing for the respondents contended that the decision relating to bifurcation/rationalisation of cards in case of public distribution system is governed by the provisions of the Essential Commodities Act 1955 and the Control Orders made thereunder. Keeping in view the larger public interest and in accordance with the circular instructions, a decision has been taken by the competent

authority to effect bifurcation/rationalisation. Unless it is totally contrary to the guidelines of the circulars, normally this Court exercising writ jurisdiction would not interfere in policy decision of the State. Even otherwise, the petitioners cannot claim any legal right whatsoever, when the competent authority had taken a decision to bifurcate/rationalise the shops, duly taking note of the Circular dated 29.06.2021 which was issued by respondent No.2 basing on the recommendations sent by the District Collectors and the Chief Rationing Officers and guidelines were issued in view of the increase of population, units, quantity and distance covered by the card holders from their residence and economic viability of the dealers and while furnishing the details allocation, 86% distribution and margin money being received on 86% distribution in descending orders, it was requested to examine the feasibility of creation of new fair price shops and submit information. Acting on the said instructions issued by the Government, respondent No.2/Commissioner of Civil Supplies, after receiving preliminary information from the District Collectors issued instructions to all the District Collectors to furnish the detailed information so as to take a policy decision for allotment of fair price shops for needy localities. Therefore, the impugned order does not suffer from any arbitrariness and as such the writ petition is liable to be dismissed.

8. Heard the learned counsel for the parties and perused the record.

9. The Government in discharge of its constitutional obligations as a Welfare State had undertaken the task of supplying of essential commodities to its citizens through the medium of fair price shops established by the Government as per the provisions of the Essential Commodities Act and the relevant Control Orders made thereunder. As per the policy, the Government also granted authorisation to various individuals, societies and other institutions from time to time depending upon variety of facts and circumstances. Authorisation of fair price shops created and established by the Government is granted as per the provisions of the A.P. Scheduled Commodities (Regulation of Distribution by Card System) Order, 1973. The scheduled commodities have to be distributed through the said fair price shops to the cardholders. The very authorisation itself is issued with a view to control the distribution of scheduled commodities to the card holders and the authorised dealer cannot sell or supply even the scheduled commodities to any other person except the cardholders as per the quota allotted by the Government for the specific purpose.

10. The policy decision, the guidelines framed by the Government and the Control Order would undoubtedly reveal that the paramount

consideration in creating or establishing fair price shops is for the convenience of the cardholders. The purpose is to supply the essential commodities to the consumers in a convenient and speedy manner to the people at pre-determined cost. The authorisation granted by the authorities does not create any right as such in a dealer except such rights which are given by the authorisation itself and no person can claim the dealership of a fair price shop as a matter of right. Further, the establishment and creation of fair price shops would depend upon variety of factors and circumstances which have to be taken into account by the administration concerned and the discretion exercised in this regard cannot be assailed before any forum. It is for the State and its instrumentalities to decide how many fair price shops should be there in each District or Mandal and to have more number of fair price shops can never be said to be an arbitrary decision and on the other hand to have more number of fair price shops is convenient for the cardholders to get the essential commodities quickly and conveniently. Supply of essential commodities through the Public Distribution System is an obligation cast upon the State. To discharge its obligation to distribute the essential commodities to needy people of the society, the State is always entitled to frame policies and the policies framed by the State can never be considered to be arbitrary, if the said policies are catering to the needs of large

sector of public who are in necessity of receiving the essential commodities. Therefore, it will fall within the realm of the State Government to take a decision to bifurcate or rationalise the shops to distribute the essential commodities to the poorest of the poor at their doorstep, so as to avoid inconvenience and exploitation of the State supply to the black marketers. Therefore, the decision to have another fair price shop by bifurcation or rationalisation of the cards from the existing fair price shops in the normal circumstances cannot be said to be an arbitrary or illegal decision which requires to be judicially reviewed.

11. The main question that falls for consideration in this batch of writ petitions is whether any notice is required to be issued to the fair price shop dealers before effecting bifurcation or rationalisation of the shops and whether non-issuance of notice amounts to violation of principles of natural justice or contravention of the guidelines issued in G.O.Rt.NO.55 dated 12.05.2015.

12. In the case of **District Collector vs. B. Suresh**¹ the Supreme Court considered a similar question as to whether prior notice is required before fair price shops is bifurcated and held as under:-

“Under the provisions of the Andhra Pradesh Scheduled Commodities (Regulation of Distribution by Card System) Order,

¹ 2000(1) ALD 9 (SC)

1973, which order has been framed under the provisions of the Essential Commodities Act, 1955, a Fair Price Shop Dealer has no right to be appointed as such dealer. The licence which such dealer has obtained under the provisions of the Act to deal with the commodities has not been cancelled. The right to trade under Article 19(1)(g) of the Constitution of India is not being affected in any manner. The Government, as a policy decision, decided to reduce the number of cards per dealer. Such decision does not affect the rights, if any, of the Fair Price Shop Dealers and as such the High Court was in error to hold that they were to be given any notice prior to the impugned decision of the State Government.”

13. In the present case, respondent No.2 issued Circular dated 25.03.2021 requesting the District Civil Supplies Officers to offer their remarks on the representation submitted by the Telangana State Fair Price Shop Dealers Association to allot sufficient number of cards to the fair price shops for their economic viability. The Telangana State Fair Price Shop Dealers Association has represented that the Government of Telangana is distributing only rice and the Commission being paid to them is not sufficient; to distribute 15 to 20 types of essential commodities through fair price shops by giving Rs.5/- commission on each article and to give Rs.200/- per quintal as commission and to give Rs.300/- as commission whose quantity is below 50 qtls per month; they are unable to meet the expenses for shop rent, helper salary, hamali charges, internet and electricity charges, paper rolls and stationary; and therefore, they requested that

each fair price shop should be allotted (i) 500 to 1000 cards in rural areas (ii) 1000 to 1500 cards in Municipalities (iii) 1500 to 2000 cards in Corporations and (iv) 2000 to 3000 cards in GHMC area. The petitioners relying on the said Circular are praying this Court to issue Mandamus and are seeking implementation of the Circular issued by respondent No.2 which literally called for remarks from the District Civil Supply Officers of the respective Districts.

14. It is settled principle of law that Mandamus cannot be issued to enforce the executive instructions or circular instructions which are not having any statutory force in the absence of exceptional circumstances. It is also well settled that Mandamus does not lie to enforce departmental manuals or instructions not having any statutory force, which do not give rise to any legal right in favour of the petitioner. For breach of such instructions a member of public or fair price shop dealers cannot seek remedy in the Courts. Since those circulars or memos or executive instructions issued by the Executive are not having any statutory force of law, they cannot confer any legal right upon anybody. Therefore, the same cannot be enforceable by issuing Mandamus under Article 226 of the Constitution of India. Unless non-observance of non-statutory rules or the practice would result in arbitrariness, the rights created basing on the executive instructions cannot be enforceable and that too when the State has

taken a policy decision in the larger interest of the public. The bifurcation/rationalisation of the fair price shops in the present batch of cases is proposed as it would be convenient for the cardholders to get essential commodities quickly and conveniently.

15. In view of the above and since allotment of fair price shops to the petitioners would not confer on them any vested or statutory right to have particular number of cards by any Statute or Control Order, the decision to have another fair price shop by bifurcating the existing fair price shops cannot be said to be arbitrary and as such the impugned orders do not require to be interfered by this Court.

16. Resultantly, all the writ petitions are dismissed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

C.V.BHASKAR REDDY, J

26.04.2023

Note: LR copy to be marked.

JSU