

(2009) 11 KL CK 0135
In the High Court Of Kerala
Case No : W.A. No. 1033 of 2007

Amose D.

APPELLANT

Vs

C. Selvaraj and Others

RESPONDENT

Date of Decision : 09-11-2009

Acts Referred:

Citation : (2010) 1 ILR (Ker) 491 : (2009) 3 KLJ 802 : (2009) 4 KLT 827

Hon'ble Judges : V.K. Mohanan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : K. Ramakumar, for the Appellant; Pirappancode V.S. Sudhir and P.K. Babu (G.P.), for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—This writ appeal is filed against the judgment of the learned Single Judge declaring ineligibility of the appellant (5th respondent in the O.P.) for appointment as an Authorised Retail Distributor of ration articles and simultaneously, upholding the order of the original authority, appointing the first respondent (petitioner in the O.P.) as the Authorised Retail Distributor. Applications were invited by the District Supply Officer, vide Ext. P1 dated 5.5.1993 for appointment of a regular Authorised Retail Distributor of ration articles in Ward No. III at a place called Pulinkudi in Ariyancode Panchayath within Neyyattinkara Taluk in Thiruvananthapuram District. The District Supply Officer, after scrutinising the applications, found the appellant not resident locally and therefore, ineligible and from among others, he appointed the first respondent as Authorised Retail Distributor vide, Ext. P2 order dated 26.8.1993. Even though the appellant claimed to have longer experience than the first respondent, the appellant was found ineligible under proviso to Rule 45(1) of the Kerala Rationing Order, 1966 as he was not a resident in that area where the ration shop was sanctioned. Admittedly, the ration shop was sanctioned in Ward No. III at Pulinkudi where the appointee, viz., the first respondent was residing. Since the appellant was residing in Ward No. II, he was found ineligible. The first

respondent's appointment was challenged in appeal by the appellant before the District Collector, who set aside the order and remanded the matter for reconsideration again. However, on revision filed by the first respondent, the Civil Supplies Commissioner set aside the Collector's order and restored the order of the original authority, appointing the first respondent as an Authorised Retail Distributor of the area of Ward No. III in that Panchayath. The appellant questioned the decision of the Commissioner before this Court in O.P. No. 4408 of 1995 and the learned Single Judge of this Court gave, him liberty to file revision petition before the Government and the Government was directed to consider the matter in revision. Against this, the first respondent filed writ appeal (W.A. No. 368 of 1996) and vide, Ext. P9 judgment dated 26.2.1996, a Division Bench of this Court directed the respondents to implement the original order, pending decision of the matter in second revision to be filed by the appellant before the Government. Consequently, pending decision in the revision filed by the appellant, the first respondent was appointed as Authorised Retail Distributor and he started his business. While so, the Government decided the revision, vide Ext. P13 order dated 2.8.1996 setting aside the orders of the Civil Supplies Commissioner and the District Supply Officer and appointed the appellant as the Authorised Retail Distributor. Immediately thereafter, the first respondent approached this Court challenging the said order by filing O.P. No. 12652 of 1996. The first respondent's case is that even though on the next day of filing the original petition, i.e. on 6.8.1996, the case came up for admission before this Court, the respondents reported compliance of the impugned order of the Government and on that day after noon, he was removed and the appellant was substituted in the place of the first respondent, who was running the ration shop. Even though the writ petition was filed by the first respondent on 5.8.1996, unfortunately, the same was kept pending in this Court for nearly eleven years and only on 27.3.2007, it was disposed of by the learned single Judge allowing the first respondent's claim for entitlement of appointment as Authorised Retail Distributor, over the appellant by upholding the decision of the original authority, confirmed in revision by the Civil Supplies Commissioner. It is against this judgment, the appellant has filed this writ appeal and pursuant to the interim order passed in the writ appeal, the appellant is still continuing to run the ration shop which was handed over to him on 6.8.1996 by the authorities based on the decision of the Government in 1996, which now stands vacated under the impugned judgment. The delay in disposal of the original petition is on account of the apparent divergent views taken in the two Division Bench decisions of this Court on the meaning of locality" and on account of a reference and decision by Full Bench of this Court on the issue. We have heard Senior counsel Sri. K. Ramakumar, appearing for the appellant, Sri.Pirappancode.V.S.Sudhir, appearing for the first respondent and the Government Pleader for respondents 2 to 5.

2. In the first place, the question of law that is raised for our decision is whether the appellant was rightly found ineligible by the learned Single Judge for appointment as Authorised Retail Distributor as he is not a normal resident in the

locality where the Authorised Retail Distributor was appointed. The learned Senior counsel appearing for the appellant contended that even though Authorised Retail Distributor was to be appointed in Ward No. III, the appellant, being a resident of the neighbouring ward, viz., Ward No. II, should also be treated as a resident in the locality and so much so, he was rightly found eligible in the revisional order by the Government for appointment. The contention of the first respondent is that the resident of the locality can only mean "resident" in the ward and so much so, the appellant is ineligible for appointment as Authorised Retail Distributor in Ward No. III and the first respondent, being the only person found eligible, was rightly appointed by the original authority, whose order was confirmed in revision by the Civil Supplies Commissioner, then "the Board of Revenue". The relevant proviso to Rule 45(1) of the Rationing Order, 1966 is extracted as follows:-

45(1) For the purpose of distributing rationed articles, the District Supply Officer may, by order, appoint in respect of any area any person as authorised retail distributor in respect of any rationed article.

Provided.....

Provided.....

Provided also that a person who is a full time employee in any establishment or who is not normally resident in the locality shall not be eligible to hold an authorisation to run the retail ration depot under this order.

(underline supplied)

Though the matter was referred to Full Bench, the Full Bench has not considered the significance of ward within the local authority whether it be the Panchayat/ Municipality or Corporation. However, it is seen from the judgment of the Full Bench that the Division Bench judgment of this Court in L. Jose Vs. K. Nesamony and Others, is confirmed by the Full Bench. The relevant finding of the Division Bench in that judgment is as follows:-

8. As can be seen from Ext. P1 notification itself, the locality where the ration shop is sanctioned is shown as Vellarada Panchayat striking down the other localities noted therein viz., Municipality and Corporation, Ext. P1 itself indicates that for the purpose of Rationing Order, locality has been understood as Taluk/ Municipality/Corporation/Panchayat. In so understanding, Ext. P1, it cannot be said that the meaning of the word "locality" has been given a restricted scope. The meaning of the expression "normally resident in the locality" mentioned under clause 45(1) of the Kerala Rationing Order is the normal residence of the person in the Panchayat/Municipality/Corporation area, where the ration shop is sanctioned by the authorities.

(underline supplied)

In this case, we have to examine whether the appellant is a "normal resident" in

the locality for the purpose of appointment as Authorised Retail Distributor pursuant to Ext. P1. On a reference to Ext. P1, we find that A.R.D to be appointed pursuant to the said notification was in "Ward No. III" at the place called "Pulinkudi". What is clearly stated in the above judgment, which is confirmed by the Full Bench, is that the local residence has to be considered with reference to the locality of the Panchayath where the ration shop is sanctioned by the authorities. It is very clear from the above finding that in the first place, what is to be examined is in which Panchayat/Municipality/Corporation, the ration shop is located and then what is to be considered is the area of such Panchayat/Municipality/Corporation where it is proposed to be sanctioned. The residence in the locality, therefore, has to be examined with reference to the area of the Panchayath where the ration shop is proposed to be sanctioned. When a ration shop is sanctioned in a specific ward, the residence in the locality, in our view, is residence in the ward only and not any other ward of the same Municipality/Panchayat/Corporation. Therefore, we are unable to accept the contention of the senior counsel for the appellant that local residence only mean residence in the Panchayat/Municipality/Corporation where the ration shop is proposed to be sanctioned. There are ever so many ration shops sanctioned at various places within the same Panchayat/Municipality/Corporation. Therefore, reference to "residence" in the locality can only mean residence within the area where ration shop is sanctioned. The very purpose of the requirement of local residence of the dealer is to ensure the availability of the dealer, locally, his familiarity with the ration card holders etc. for the prompt delivery of ration articles. We, therefore, hold that residence any where in the Panchayat/Municipality/Corporation area is not sufficient for the purpose of appointment as a Retail Distributor within a ward or specified area of a Panchayat and the requirement is that, the applicant should be normally a resident in the ward or area where the ration shop is sanctioned.

3. Senior counsel Sri. K. Ramakumar appearing for the appellant referred to the finding of the Full Bench wherein they mentioned the identification of locality with reference to the pattern of residence of card holders for whom rationed articles are distributed from the ration shop. If the ration shop is not created for the residents of the ward where ration shop is sanctioned, then certainly the residence in the locality cannot be equated with the ward in which ration shop is located. In other words, if ration articles are distributed for the residents of an area which may cover different wards, then the residence in the locality has to be considered with reference to the area where ration shop is located and not with reference to the ward. In this context, we sought a clarification with regard to the pattern of residence of card holders and the Government Pleader submitted that out of 135 card holders, 87 are residing in Ward No. III, 25 in Ward No. I, one in Ward No. 11, five in Ward No. IV and the remaining card holders are residing in other wards ranging from V to VII. Strangely, there is only one card holder from Ward No. II where the appellant resides. On the other hand, the first respondent is residing in Ward No. III itself where 60% of the card holders are residing. Therefore, the location of the ration shop at Pulinkudi in Ward No. III

should be suitable and convenient for majority of card holders and so much so, in our view, the locality, has to be considered with reference to the residence of predominant number of card holders which is Ward No. III. As already pointed out, there may be cases where the ration shop may cover residents of different wards and in such a case, the residence within a particular ward with reference to the location of the ration shop cannot be insisted on. However, in this case, such contingency does not arise and we are of the view that the learned single Judge rightly held that the appellant, being a resident outside the locality where the ration shop is granted, is ineligible for appointment and consequently, set aside the Government Order superseding the original authority's order, which was confirmed in revision by the Civil Supplies Commissioner.

4. Even though counsel for the first respondent has produced several items of evidence to disprove the claim of experience of the appellant, such as the appellant was a student for the period he claimed to be a Salesman in a ration shop based on the certificate of experience produced, we do not want to go into those details because we have already upheld the finding of the learned single Judge that the appellant was ineligible under proviso to Rule 45(1) for appointment in Ward No. III of the Ariyancode Panchayath for appointment as Authorised Retail Distributor. Further even though the appellant's counsel stated about the subsequent development of appointment of other ration dealers in the area, we do not think, the same has any significance. We are only concerned with the correctness of the judgment of the learned Single Judge under appeal wherein he has considered the relative eligibility with reference to the Rule on "residence" which is still in force.

5. Even though the senior counsel for the appellant canvassed against the constitutional validity of proviso to Rule 45(1), we do not propose to consider the same because the same was neither raised nor decided before the learned single Judge, at any time in the several rounds of litigation before this Court between the same parties. In the normal course, change of Retail Distributor involves some time because a dealer, selling the articles, should be granted some time to sell the stock, settle accounts etc. However, the appellant's influence with the authorities is evident from the fact that based on the order dated 2.8.1996, he has been able to remove the first respondent who was running the ration shop within four days, i.e. on 6.8.1996, that too after the filing of the writ petition by the first respondent on 5.8.1996 itself. We, therefore direct, the second and other respondents to substitute the appellant with the first respondent at the same speed at which the first respondent was substituted by the appellant pursuant to Ext. P13 order. The appellant shall not be released any ration articles from the date of receipt of this judgment and supplies should be made only to first respondent who will immediately comply with all formalities to commence business.

The writ appeal is dismissed with directions as above.