
(2012) 02 MP CK 0136

In the Madhya Pradesh High Court

Case No : Writ Petition No. 10369 of 2011

Ashok Pateria

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 14-02-2012

Acts Referred:

Citation : (2012) ILR (MP) 1142

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : R.K. Samaiya, for the Appellant; J. Laxmi Aiyer, P.L. for the respondents No. 1, 2 and 3, K.C. Ghildiyal and R.S. Khare, for the respondent No. 4, for the Respondent

Final Decision : Allowed

Judgement

K.K. Trivedi, J.—The petitioner has come before this Court ventilating the grievance against the order dated 06.06.2011 (Annexure P-10) passed by the Collector in appeal filed by respondent No. 4, against the order of Sub Divisional Officer, by which complaint made against the petitioner was rejected and the petitioner was permitted to run the fair price shop. Brief facts giving rise of filing of this writ petition are that an enquiry was conducted on the basis of some complaint made against the petitioner and an order was passed cancelling the permit to run fair price shop granted to the petitioner under the Madhya Pradesh (Khadya Padarth) Sarvajanic Nagrik Scheme, 1991 (herein after "Scheme" for brevity). Unsuccessful appeal was filed by the petitioner against the said order and after dismissal of the appeal, writ petition was filed before this Court. The writ petition was dismissed, therefore, a writ appeal was filed by the petitioner being W.A. No. 335/2010. The said writ appeal came up for hearing before this Court on 20.10.2010 and after considering the validity of the scheme and the action taken by the respondents, the Division Bench of this Court reached to the conclusion that neither the order was properly passed by the Sub Divisional Officer nor the appeal of the petitioner was considered in appropriate manner by

the Collector. After quashing the orders so passed, the matter was remitted back to the Sub Divisional Officer for holding the enquiry afresh after affording an opportunity of hearing to the petitioner and the other persons. The Division Bench of this Court passed the following order :

The matter is remitted back to the Sub Divisional Officer. The Sub Divisional Officer shall afford an opportunity of hearing to the appellant and shall pass a reasoned order. Needless to state that the Sub Divisional Officer shall afford an opportunity of hearing to the appellant and to adduce the evidence and shall hear respondent No. 4 as well as the complainants. The aforesaid exercise shall be completed within a period of three months.

Since during the pendency of the enquiry direction was given to make alternate arrangement, same was done and the fair price shop was attached to some other society.

2. The petitioner was given a show cause on 16.12.2010. The respondent No. 4 was also issued the same show cause. On 28.12.2010, reply was submitted by the petitioner and all the documents relating to such complaint were produced. The petitioner also furnished a list of witnesses and certain affidavits before the enquiry officer. No reply whatsoever was submitted by the respondent No. 4 pursuant to the show cause issued nor any list of witnesses was made available. The statements of witnesses were recorded in presence of respondent No. 4 and such witnesses were also cross-examined. The statements of witnesses are available on record as Annexure P-7 collectively. The office bearers of respondent No. 4 did not examine them as a witness. The matter was thereafter closed for hearing and vide order dated 23.03.2011 (Annexure P-8), the Sub Divisional Officer categorically held that the complaint made against the petitioner was not found proved and, therefore, no action was required to be taken. The fair price shops of Ward Nos. 3, 4, 5 and 6 were again attached with the petitioner Society. This order of Sub Divisional Officer was called in question by filing an appeal by the respondent No. 4 in which an interim stay was granted on 27.04.2011. The matter was thereafter heard and by the impugned order dated 06.06.2011 the appeal of the respondent No. 4 has been allowed and the matter has been remitted back for holding the enquiry afresh, after categorically recording the finding that the Sub Divisional Officer has not called the Food Officer or Junior Supply Officer for the purposes of proving the complaint made against the petitioner. Against this order, this writ petition is filed by the petitioner.

3. The scheme made by the State Government under the Control Order of 1960 has the force of law. The scheme contemplates an action to be taken against the cooperative societies running the fair price shops. In Clause 13(5) it is specifically provided that in case any complaint is made against the society running the fair price shop and if the said society is a cooperative society and is registered as such, it is necessary to send the report to the competent authority of the Cooperative Department, who will have to make an enquiry in that respect and submit a report within a period of 15 days. Only when such a report is

received by the competent authority, i.e. the Sub Divisional Officer in case of a fair price shop situated in rural area, the enquiry is required to be conducted by issuing the show cause. On first occasion when the enquiry was initiated, this particular direction was not complied with and only because ex parte statements were recorded, the order was passed against the petitioner. The Collector, Tikamgarh, though tried to give benefit of hearing to the petitioner when the appeal was filed against the first order by the petitioner, but such a step taken by the respondent Collector was not found justified or in accordance to the scheme by the Division Bench of this Court where it has been categorically recorded that granting of such a post decisional hearing was of no consequence. In the second enquiry also after the remand by this Court, no steps were taken to get any complaint proved through the officers of the Cooperative Department and nothing was done in that respect. If the action was per se illegal in view of non-compliance of mandatory requirement, nothing was required to be done against the petitioner.

4. If the findings were categorically recorded after affording full opportunity of hearing to respondent No. 4 by the Sub Divisional Officer, the Collector was not right in considering that certain persons were not examined as witnesses. The respondent No. 4 was represented by a lawyer and an officer/ office bearer of the society before the Sub Divisional Officer. If the statements of witnesses were recorded by the said officer, who were produced by the petitioner, and cross-examination of said witnesses was done by the respondent No. 4, it was in the wisdom of respondent No. 4 to examine any witness in support of its claim. If such a right was not exercised by the respondent No. 4, the Collector was not right in holding that the Sub Divisional Officer was required to take action in that respect. Such a lacuna, which was created by respondent No. 4, was not to be fulfilled by making a remand order in such a manner.

5. In view of the aforesaid, finding that the order passed by the Collector is not in accordance to law or the scheme, the same is hereby quashed. The order of the Sub Divisional Officer is affirmed. Now the action be taken in accordance to the order of the Sub Divisional Officer. The writ petition is allowed to the extent indicated herein above. There shall be no order as to cost.