

(2013) 11 RAJ CK 0051

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 291 of 2006

Bagmal Jat

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 21-11-2013

Acts Referred:

Citation : AIR 2014 Raj 40

Hon'ble Judges : Amitava Roy, C.J;Pratap Krishna Lohra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the appellant. The appellant/writ-petitioner's challenge to the validity of sub-clause (1) of Clause 3 of the notification dated 21.2.1998 issued under the Rajasthan Foodgrain and Other Essential Articles (Regulation of Distribution) Order, 1976 (for short, hereinafter referred to as "the Order") having been negated, he is before this Court seeking redress.

2. The appellant/writ-petitioner had been operating his fair price shop on the basis of authorization under the Order since the year 1984. He contested the panchayat elections and was elected as a member of the Panchayat Samiti Gangrar on 8.2.2005. Thereafter, the District Supply Officer, Chittorgarh by notice dated 26.2.2005 solicited information from him as to whether he would continue to operate the fair price shop by offering his resignation to the post of the member of the said Panchayat Samiti. According to the appellant/writ-petitioner, it was then that he came to learn that by the impugned notification, a proviso as quoted hereinbelow had been added to Clause 3(1) of the Order:--

Provided that no Member of Rajasthan Panchayat Raj Institution or local body or any public servant shall be granted or entitled to hold or continue to hold any authorization as an authorized whole-seller/authorized Fair Price Shop Keeper under this Order.

3. Situated thus, he impeached the constitutional validity of this proviso

contending that the same was violative of Articles 14, 19 and 21 of the Constitution of India apart from being discriminatory as well.

4. The learned single Judge rejected the impugment on the following grounds:

(1) The plea of discrimination on the contention that whereas the members of the Rajasthan Panchayati Raj Institution had been disqualified to hold or continue to hold any authorization as an authorized whole seller/authorized fair price shop keeper under the Order, the members of the Legislative Assembly or the Parliament had been excluded from the purview of such prohibition, is untenable having regard to the essential and inherent distinguishing features of the two offices.

(2) Though the insertion of the proviso had been by the notification dated 21.2.1998, he did not question the validity thereof immediately thereafter and contested the elections for the post of member of the Panchayat Samiti and thus, his belated assailment to the amendment is unassailable in law and on facts.

(3) The proviso having been incorporated to ensure improvement in the working of the Panchayati Raj Institutions by imposing the restriction as contained therein, the challenge thereto on the ground of unconstitutionality lacks merit.

5. The learned counsel for the appellant has urged that the selective prohibition engrafted in the impugned proviso is per se discriminatory and arbitrary and thus, the impugned judgment and order is liable to be interfered with. As there is no perceptible difference in the offices of a member of the Panchayati Raj Institution and of a member of the Legislative Assembly or the Parliament, having regard to the purported objectives sought to be achieved thereby, the proviso is patently illegal and unconstitutional, he argued.

6. Upon hearing the learned counsel for the appellant and on a consideration of the materials on record, we are unconvinced by the challenge laid. Bearing in mind the nature of the activities to be undertaken under the Order by an authorized whole-seller/authorized fair price shop keeper, we are of the view that the claim of parity of the office of a member of the Panchayati Raj Institution with that of a member of the Legislative Assembly or the Parliament is untenable. The plea of discrimination is therefore, ill-founded. The objectives of the proviso prescribing a disqualification of a member of the Panchayati Raj Institution to hold or to continue to hold any authorization as an authorized whole-seller/authorized fair price shop keeper being unambiguously to obviate the possibility of any unwarranted aberrations in the mechanism of public distribution of foodgrains and other essential articles, we see no convincing justification to differ from the reasonings recorded by the learned single Judge. There is no explanation forthcoming as well to explain the delay on the part of the appellant/writ-petitioner to challenge the notification occasioning the insertion of the proviso. In all, we find no cogent reason to interfere. The appeal thus stands dismissed.