
(1988) 07 RAJ CK 0046

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3102 of 1987

Damodar Pukhraj Chandak

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 28-07-1988

Acts Referred:

Rajasthan Foodgrains and other Essential Articles (Regulation and Distribution) Order, 1976 — Section 22(A), 8

Citation : (1988) WLN 137

Hon'ble Judges : Ranveer Sahai Verma, J;Kanta Bhatnagar, J

Bench : Division Bench

Judgement

Kanta Bhatnagar, J.—In this writ petition Pukhraj Chandak, the proprietor of M/s Damodar Pukhraj Chandak has challenged the legality of the order Ex. 5 dated November 25, 1987 by which his authorisation for the fair price shop at village Kolu Pabuji was cancelled and respondent No. 4, Gram Sewa Sahakari Samiti, Kolu Pabuji, Tehsil Phalodi, District Jodhpur was appointed as the authorised fair price shop at that village. The petitioner was appointed as the authorised fair price shop at village Kolu Pabuji vide order Annexure-1 dated January 3, 1987 and deposited the required amount of security on 5th January, 1987. The authorisation letter Annexure-3 dated 8th January, 1987 issued Under clause 3(4) of the Rajasthan Foodgrains and other Essential Articles (Regulation and Distribution) Order, 1976 (for short "the Order of 1976" here in after). It is averred in the writ petition that the petitioner did the supply work in accordance with the order to his utmost capacity and all fairness and there was no complaint against him. That, no time limit was prescribed under the authorization order Annexure-3. However, vide impugned order Annexure-5 issued on 25th November, 1987. as stated earlier, respondent No. 4 was appointed as authorised fair price shop without any notice or opportunity of hearing being given to the petitioner.

2. The petitioner, has, therefore, challenged the legality of Annex.-5 dated 25th November, 1987 on the ground that the Collector or the District Supply Officer

had no authority to cancel the authorization of the petitioner and prayed that the order Annexure-5 dt. 25th November, 1987 be quashed.

3. Notices were issued to the respondents. Respondents Nos. 1 to 3 in their written reply admitted the authorisation to the petitioner stating that initially Gram Panchayat Sahakari Samiti, Kolu Pabuji was running this shop but due to some financial exigency, it could not be continued and, therefore, one Bhim Singh was authorised to run the shop. As Bhim Singh also could not run the shop it was allotted in the name of the petitioner. That it was only a stop gap arrangement to avoid the difficulty of the public at large and following the directions issued vide order dated 27th February, 1986, specifically providing that top priority should be given to the Co-operative Societies whose financial condition is good and against whom no serious allegations or complaints are pending the authorisation was given to respondent No. 4 the Gram Sewa Sahakari Samiti, Kolu-Pabuji. That because of the Co-operative Society, respondent No. 4 being ready to run the shop, the Assistant Registrar Co-operative Society, Jodhpur recommended for issuing of licence to it as per intention of the direction Ex. R/1 and authorisation was issued in its favour in place of the petitioner. That when the Co-operative Society was prepared to do the supply work, the petitioner could not be allowed to continue the shop. That the order Annexure-5 was issued in pursuance of the provisions of the Rajasthan Co-operative Societies Act (for short "the Act" here in after) to encourage and promote the Coperative movement in the State.

4. Regarding the notice to the petitioner before cancelling the authorisation, it has been stated that authorisation was a stop-gap arrangement which conferred no right on the petitioner. The entertainability of the writ petition has also been challenged on the ground that the petitioner without availing the alternative remedy of filing the appeal u/s 22 and Revision Petition u/s 22(A) of the Order of 1976 has approached this Court and on this count also, the writ petition deserves to be dismissed.

5. At the request of the learned Counsel for the parties, the petition was heard for final disposal at the admission stage.

6. Mr. Dinesh Maheshwari, learned Counsel for the petitioner strenuously contended that the order Annexure-5 dated 25th November, 1987 has not been passed under the Order of 1976 and, therefore, the petitioner could not have filed any appeal u/s 22 or Revision Petition u/s 22(A) of the Order of 1976.

7. Section 8 of the Order of 1976 deals with the power to suspend and cancel the authorisation. The authorisation according to that section may be suspended or cancelled by an order in writing by the Collector or any other officer authorised by the State Government. Sub-section (3) of that section provides that no order of cancellation shall be made under this order unless, the authorisation holder has been given a reasonable opportunity of stating his case against the proposed cancellation.

8. Dr. S.S. Bhandawat, Additional Government Advocate submits that the opportunity of hearing as required by Sub-section (2) of Section 8 of the Act was not given because the authorisation was not cancelled u/s 8(1) of the Act rather it was so done in compliance to the directions issued vide Annexure-R/1. If it is so then Section 8 being the only provision for suspending or the cancelling authorisation, the order Annexure-5 dated 25th November, 1987 cannot be said to be an order passed under the Order. Sections 22 and 22(A) apply only to cases where an order is made by an Officer under the Order and, therefore, the question of the petitioner availing statutory alternative remedy prior to filing the writ petition would not arise.

9. Dr. Bhandawat emphasized that in pursuance of the policy of the Government to encourage the co-operative movement preference is given to the Co-operative Societies and as such it cannot be said to be prejudicial to the interest of individuals.

10. Dealing with the preference given to Co-operative Societies with regard to the allotment of fair price shop their Lordships of the Supreme Court in the case of Sarkari Sasta Anaj Vikreta Sangh Tahsil Bemetra and Others Vs. State of Madhya Pradesh and Others, , observed as under:

No one can claim a right to run a fair price shop as an agent of the Government. All that he can claim is a right to be considered to be appointed as an agent of the Government to run a fair price shop. If the Government takes a policy decision to prefer Co-operative Societies for the appointment as their agents to run fair price shops, it cannot be said that there is any discrimination....

11. It was further held that there is certainly a reasonable classification and a nexus with the object intended to be achieved, which is a fair and assured supply of ration to the consumer. The preference to be shown to Co-operative Societies does not create a monopoly in their favour and is not discriminatory.

12. Mr. Maheshwari submitted that he does not dispute the right of the State Government to give preference to the Co-operative Societies at the time of allotment and the correctness of the order Annexure-R/1 but the grievance of the petitioner is that this preference should be given at the time of the allotment and it is not the intention of Annexure-R/1 to cancel the authorisation already made in favour of any one else and appoint Co-operative Society in its place for running the fair price shop.

13. Annexure R/1 dated 27th February, 1986 provides the guidelines for allotment of fair price shops. There are five categories in order of preference: first being the Co-operative Society of which financial condition is good and against which there are no serious complaints and the fifth being the private person not doing any other business and whose livelihood mainly depends upon the running of the fair price shop. Again guidelines were given vide order Ex. R/4/1 dated 28th April, 1987, the preference to Co-operative Societies and other persons was in the same sequence Para 2 of Ex. R/4/1 deals with 7% of the

reservation in the allotment of the fair price shop for ex-military personnel and in case of their non-availability, the allotment is to be made in order of preference given in para 1 of Ex.R/4/1. The last line of Para-2 is that this condition would be applicable only for the fair price shop of the new allotment.

14. Mr. Maheshwari referring to this provision submitted that the guidelines are to be taken only for the new allotment. Dr. Bhandawat, could not point out as to how the order Ex.R/4/1 was to be made applicable retrospectively. In other words Ex. R/4/1 no where states that the authorisation already made in favour of persons, other than Co-operative Societies, mentioned in the Order should be cancelled and in their place allotment should be made to the Co-operative Societies. If the intention of the Order would have been to cancel the authorisation already made in favour of persons other than the Co-operative Societies, it would have been specifically mentioned in Ex. R/4/1.

15. Dr. Bhandawat argued that though there is no such direction for cancelling the allotment made to persons other than the Co-operative Societies, still in view of the policy of giving top-priority to the Co-operative Societies, it was necessary to cancel the authorisation of the petitioner. The argument has no force. If the intention would have been to allot the shop to Co-operative Society, only then the other four categories including the private persons, in which category the petitioner falls would not have been mentioned in the priority list given in Clause (1) of the Order Ex. R/4/1. Dr. Bhandawat could not produce any other order authorising the Collector to cancel the existing authorisation to persons other than the Co-operative Societies.

16. The order Annexure-5 dated 25th November, 1987 can, therefore, neither be said to have been passed u/s 8 of the Order of 1976 nor in compliance with Ex. R/4/I dated 28th April, 1987 and, therefore, deserves to be quashed and we accordingly quash the same.

17. The writ petition stands disposed of accordingly.