
(2008) 02 RAJ CK 0022
In the Rajasthan High Court

Desh Raj and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 21-02-2008

Acts Referred:

Essential Commodities Act, 1955 — Section 3

Citation : (2008) 3 RLW 2273

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mohammad Rafiq, J.—Heard learned control for the parties.

2. Those three writ petitions pertain to allotment of fair price shop for 1/2 portion of Village Bhukrawali, Tehsil Hindaun, District Karauli.

3. The brief facts giving rise to these petitions are that a notice was issued on 2/2/2007 inviting applications from the candidates desirous to get allotment of fair price dealer shop.

4. Writ petitioner Deshraj in SBCWP No. 4367/07 has come out with the grievance that while advertisement was issued for one fair price shop covering 1/2 of Village Bhukrawali, Tehsil Hindaun, District Karauli, ultimately the respondents have appointed two dealers instead of one, vide order dated 7/5/2007. Had the applicants been invited for two fair price shops instead of one, the other eligible candidates would have also applied. The procedure as contained in the Circulars dated 7/10/2005 & 7/5/2001 issued by the Government has been given a complete go- bye.

5. Writ petitioner Brijendra Singh in SBCWP No. 4366/07 has similarly argued that notice inviting applications was issued by the District Supply Officer for appointment of fair price shop dealer for Village Jatwara, Tehsil Hindaun, District Karauli. Six members of the Allotment Advisory Committee recommended the

name of Rohitash Singh S/o Kapur Chand but instead of appointing one, the D.S.O. vide order dated 7/5/2007 appointed two dealers namely; Rohitash Singh and Shyam Singh. In part each of Village Jatwara and that this was done because in the Gram Panchayat Jatwara, number of ration cards were more than 500 and number of units are 4000. It is contended that had it been indicated by the respondents that instead of one dealer, two dealers shall be appointed, the other candidates could also participate in the process but their right to participation has been denied, the reply that was filed by the State supported by the affidavit of officer-in-charge also it was disclosed that two dealers referred to above were appointed for 1/4th part each of village Jatwara and that this was done because in the Gram Panchayat Jatwara, number of ration cards were more than 500 and number of units are 4000. It is contended that had it been indicated by the respondents that instead of one dealer, two dealers shall be appointed, the other candidates could also participate in the process but their right to participation has been denied.

6. Writ petitioner Brij Mohan Jat in SBCWP No. 9612/07 has also raised similar grievance with regard to allotment of fair price shop in Gram Panchayat Jatwara, Tehsil Hindaun, District Karauli. He has produced on record the letter of the Government dated 23.6.2007 whereby instead of two allotments for half portion of Village Jatwara, three allotments of fair price shops were made in favour of Rohitash, for 1/3rd portion, Shyam Singh for 1/3rd portion and Balveer Singh for 1/3rd portion. It is argued that facts were not correctly disclosed before this Court and in the reply to the writ petition filed by Brijendra Singh, a statement was made that only two allotments of fair price shops have been made in half each portion for Village Jatwara on 17.9.2007 whereas third allotment had already been made on 23.6.2007.

7. Learned Counsel for the petitioners has argued that according to the procedure of allotment as contained in the Government Circular dated 7/5/2001 issued under Clause 20 of the Rajasthan Food grains & Other Essential Articles (Regulation of Distribution) Order, 1976 which in turn has been promulgated by the State Government in exercise of power conferred on it by Section 3 of the Essential Commodities Act, 1955. The vacancies/available shops are required to be notified in advance so that eligible and desirous candidates can apply for allotment of fair price shop on the basis of Allotment Advisory Committee under Form "A" as provided in Clause 3(iii) of the Order of 1976.

8. Learned Counsel for the petitioners while citing Annexure-2 dated 7/5/2001 in SBCWP No. 9612/2007 (Brij Mohan Jat v. State and Ors.) argued that not a single member of the Allotment Advisory Committee recommended name of Balveer Singh for allotment of fair price shop dealer. Thus, two or three allotments made for fair price shop dealer, instead of one, in the aforesaid villages, the respondents have arbitrarily adopted the method of pick and choose giving a complete go-bye to the Government Circular dated 7/5/2001. Hence, it is prayed that the impugned orders are liable to set-aside.

9. Learned Counsel for the petitioners in support of their argument relied on the judgment of the co-ordinate Bench of this Court in Mahesh Chaturvedi v. State and Ors. S.B.C.W.P. No. 4160/2006 dated 3/10/2006 in which, this Court in similar circumstances, where instead of one allotment as notified, two allotments were eventually made, set-aside the allotment and directed for inviting fresh application within 10 days and complete the selection process within two months.

10. Shri Mahendra Meena, learned Counsel for respondents No. 4 and 5 and Shri Aashish Jain, learned Deputy Government Counsel while opposing the writ petitions have argued that allotments have been made strictly in accordance with the procedure of government instructions. It is argued that number of ration cards in aforesaid two villages are more than 500 and number of ration units are 4000 and the State on the recommendations of the District Supply Officer has rightly decided to allot more number of shops than only one under the public distribution system. Learned Deputy Government Counsel submits that there was no element of arbitrariness and allotments were made upon consideration of the case of all those who applied in response to the notification. It was argued that petitioners Deshraj and Brijendra Singh have not at all applied in response to notice inviting applications and, therefore, they cannot be allowed to complain about allotments in question.

11. Having heard learned Counsel for the parties and perused the impugned-orders, it is evident that the notice which was issued by the D.S.O. on 2/6/2007 inviting applications from the candidates desirous to get allotment for fair price shop dealer for 1/2 portion of Villages Jatwara and Bhukrawali, there was no intention on the part of the respondents to make two or three allotments instead of only one. In fact, proceedings of the Advisory Committee which are on record in both the cases indicates that the D.S.O. and the Tehsildar who are members of the said committee as government representatives proposed the name of only one candidate in case of the case. Had it been the intention of the government to make appointment of two dealers rather than one, there was no reason why they would have not proposed two names instead of only one. Respondents in their counter affidavit filed before this Court in SBCWP No. 4366/07 (Brijendra Singh v. State and Ors.) also asserted this fact that only two allotments instead of one have been made. Perusal of SBCWP No. 9612/07 (Brij Mohat Jat v. State and Ors.) reveals that instead of two, three dealers have been appointed in respect of Village Jatwara. Name of Balveer Singh has not at all been proposed by any of the members of the Allotment Advisory Committee. Not only there is violation of the notice inviting applications which does not indicate more number of available shops than one and the method of allotment on the basis of the recommendations of the Allotment Advisory Committee but also the instructions contained in the circular of the government dated 7/10/2005 have been completely flouted.

12. This Court is inclined to uphold the contention of the learned Counsel for the petitioners that the allotments in question have been made in arbitrary and

illegal manner and contrary to the procedure laid down by the State. This Court in Mahesh Chaturvedi supra while considering the similar controversy quashed the allotments made in similar circumstances and directed initiation of fresh selection process. I am not persuaded to take a different view than one taken by the co-ordinate Bench of this Court in Mahesh Chaturvedi, supra.

13. As a result of above discussion, all these three writ petitions are allowed. The impugned order dated 7/5/2007 (Ann.3) in SBCWP No. 4367/2007 and SBCWP No. 4366/2007 in respect of allotment of fair price shop for 1/2 portion of Villages Bhukrawali & Jatwara, Tehsil Hindaun, District Karauli and the impugned notification dated 2/2/2007 (Ann. 1), order dated 7/5/2007 (Ann. 3) and order dated 23/6/2007 (Ann.4) in SBCWP No. 9612/07 in respect of allotment of fair price shop for 1/2 portion of village Jatwara, Tehsil Hindaun, District Karauli are set-aside and the respondents are directed to initiate fresh process of selection within a period of 15 days from the date of production of certified copy of the order of this Court and conclude the same within two months thereafter.