

(2023) 02 J&K CK 0028

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 1934 Of 2020, Civil Miscellaneous No. 934 Of 2020

Farooq Ahmad Bhat & Ors

APPELLANT

Vs

Ut Of J&K& Others

RESPONDENT

Date of Decision : 07-02-2023

Acts Referred:

Constitution Of India, 1950 — Article 32, 226
Punjabi University Act, 1961 — Section 4(2), 5

Citation : (2023) 02 J&K CK 0028

Hon'ble Judges : Rajesh Sekhri, J

Bench : Single Bench

Advocate : Gulzar Ahmad Bhat, Sheikh Feroz

Final Decision : Dismissed

Judgement

Rajesh Sekhri, J

1) The petitioners have invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India for issuance of a Writ of Mandamus commanding upon the respondents not to disengage them with respect to operation of Food Fair Price Shops allotted to them under valid and proper licences.

2) Before a closer look at the grounds urged in the memo of petition, it shall be apt to have an overview of the background facts giving rise to the present petition.

3) Case set up by the petitioners is that the Government of J&K issued a policy for opening Fair Price Shops under targeted Public Distribution (Control) Order, 2015 and a scheme thereunder was issued by the Government vide Order No.127-FCS&CA of 2016 dated 04.08.2016. The object of the scheme with respect to opening of Food Fair Price Shops at other villages/locations was to provide easy access/availability of food to every household at the nearest possible location and to provide livelihood to the unemployed youth on

commission basis. According to the petitioners, they are operating and running the Food Fair Price Shops at different villages/locations allotted to them by the concerned competent authority after completing the legal formalities and requirements.

4) It is further case of the petitioners that petitioner No.1 was granted licence in reference to approval issued by the Administrative Department on 06.02.2003 and sanction was accorded to him for grant of dealership on commission basis for the location Khoshipora for 243 rationees. Petitioner No.2 was granted licence on 20.08.2014 and the sanction for dealership was accorded to him for the location K-Check Wagund covering three villages for 489 rationees. Petitioner No.3 was granted licence on 23.02.2006 and dealership sanction was accorded in his favour for the area, namely, Dalwatch for 557 rationees. Petitioner No.4 was granted licence on 20.08.2014 for Lower Munda location for 235 rationees. Petitioner No.5 was granted licence on 20.12.2011 and was accorded dealership sanction for Check Budwani and he was supplying ration to 285 rationees. Petitioner No.6 was given licence on 20.10.2003 and was accorded sanction for grant of dealership for the area known as Drienen and he was supplying ration among 376 rationees. Petitioner No.7 was granted licence on 11.04.2004 for the area, namely, Drienen Wanpora and he was supplying ration to 755 rationees. Similarly, petitioner No.8 has been given licence on 13.10.2003 for the location, namely, Kurigam, for 304 rationees and petitioner No.9 was granted license on 10.06.2008 and he was supplying ration to 213 rationees. All the petitioners have been granted dealership on commission basis to deal with the transaction regarding sale and storage of food grains and sugar under public distribution system to the consumers of their concerned areas.

5) The grievance of the petitioners is that the Government of J&K has come up with a new policy vide Government Order No.70-FCS&CA of 2018 dated 12.03.2018 and they apprehend that their position may be disturbed without following the due procedure established by law. Consequently, petitioners seek a Mandamus commanding upon the respondents not to disengage them and disturb their existing position with respect to the operation of Food Fair Price Shops allotted to them under valid licenses.

6) Countervailing the stand taken by the petitioners, the respondents are affront on the predominant premise that the present petition being based on assumptions and presumptions is not maintainable. According to the respondents, none of the Constitutional, Statutory or fundamental rights of the petitioners have been violated and since no order has been passed and no action has been taken by the respondents, therefore, the present petition, being misdirected and misconceived, is liable to be dismissed. The respondents have taken a specific stand that whenever any order will be issued, it will be based on and strictly in accordance with rules and guidelines issued on the subject.

7) Having heard rival contentions of the learned counsels and having appreciated the law governing the field, I am of the considered opinion that it no longer

remains *res integra* that a writ petition on mere apprehension or assumptions and presumptions is not maintainable.

8) While reiterating the grounds urged in the memo of petition, Mr. Gulzar Ahmad Bhat, learned advocate appearing for the petitioners has relied upon judgments of the Hon'ble Supreme Court in the cases of *D. A. V. College, Bathinda etc. vs. The State of Punjab and others* (AIR 1971 SC 1731) and *Adi Saiva Sivachariyargal Nala Sangam vs. The Government of Tamil Nadu* reported in (2016) 2 SCC 725, to submit that a writ petition under Article 226 can be maintained even on the basis of apprehensions when fundamental rights of the citizens are threatened.

9) I have carefully gone through the case law cited at bar by learned counsel for the petitioners and on perusal of both the citations, it is clear that both the cases are clearly distinguishable on facts and circumstances attending the present case.

10) In *D. A. V. College, Bathinda* (supra), Hon'ble Supreme Court has held that a petition under Article 32 of Constitution is maintainable if fundamental rights of the petitioner are either threatened or violated and it is not necessary for any person, who considers himself to be aggrieved, to wait till the actual threat has taken place. However, Hon'ble Supreme Court made this observation in the background that the Government of Punjab had issued various circulars in the light of Sections 4(2) and 5 of the Punjab University Act 35 of 1961. It is pertinent to mention that Hon'ble Supreme Court quashed the said circulars being *ultra vires* of the powers vested in the University.

11) Similarly, the Apex Court in *Adi Saiva Sivachariyargal Nala Sangam* (supra), has observed that institution of writ proceedings need not await actual prejudice and adverse effect and consequences. In the said case, the writ petitioners had assailed certain orders and ordinances issued by the Government of State of Tamil Nadu. Relevant extract of the judgment, for the facility of reference, is reproduced below:

"It is difficult for us to accept the contentions advanced on behalf of the respondents with regard to the maintainability of writ petitions on two counts. Firstly, it is difficult to appreciate as to why the petitioners should be non-suited at the threshold merely because the G.O. dated 23.05.2006 has not been given effect to by actual orders of the State Government. The institution of a writ proceeding need not await actual prejudice and adverse effect and consequence. An apprehension of such harm, if the same is well founded, can furnish a cause of action for moving the Court. The argument that the present writ petition is founded on a cause relating to appointment in a public office and hence not entertainable as a public interest litigation would be too simplistic a solution to adopt to answer the issues that have been highlighted which concerns the religious faith and practice of a large number of citizens of the country and raises claims of century old traditions and usage having the force of law. The above is the second ground, namely, the gravity of the issues that arise, that impel us to

make an attempt to answer the issues raised and arising in the writ petitions for determination on the merits thereof.”

(underlined for emphasis)

12) It is evident from the afore-quoted case law that a petition can be entertained if fundamental right of a citizen is threatened and the petitioner need not await the actual prejudice or adverse effects and consequences, provided his apprehension is well founded. In other words, the petitioner is obliged to give reasons for his apprehension and writ petition cannot be maintained on mere assumptions and without any basis.

13) Adverting to the present case, the only apprehension of the petitioners is that since the Government of J&K has introduced a new scheme dated 12th March, 2018, their position may be disturbed. The relevant extract of the said Government Order, reproduced in the writ petition, is as below:

“The licenses obtained under any of the previous relevant order in force on the date of coming into force of this order, shall be deemed valid, subject to the condition that the same is certified by the concerned Director, FCS&CA, that the licence holder is fulfilling all the codal formalities enumerated under law/rules/orders/guidelines in vogue meant for the public distribution system so far as it pertains to the issuance of licence for Fair Price Shop dealership, and accordingly a certificate to this effect be submitted to the Administrative department within 15 days from issuance of this order.”

14) It is evident from the afore-quoted Government Order that the licences obtained under the previous orders are deemed valid subject, however, to the condition that the same is certified by the concerned Director, FCS&CA, to ensure that the licence holder fulfills all the codal formalities under relevant law/rules/orders/ guidelines in vogue meant for the public distribution system. As a matter of fact the existing position of the licence holders under the previous order has been taken care of under the new order dated 12.03.2018 and there is nothing on the record to suggest that respondents have any intention to initiate any action, much less to pass any order, affecting the rights of the petitioners. It is manifest as such that petitioners have filed the present petition on the basis of mere apprehensions, which is unfounded and cannot be sustained.

15) I am fortified in my opinion by an order dated 03.05.2019 passed by this Court in the case of Nazir Ahmad vs. State and others [WP(C) No.1601/2019]. The relevant extract of the order is reproduced below:

“4. The present petition challenges the action which the petitioner apprehends may be taken on the basis of aforesaid complaint. I am of the opinion that mere filing of a complaint against the petitioner does not give him any cause of action to approach this Court. I find the present writ petition is premature at this stage as no formal action adversely affecting the rights of the petitioner is either initiated or taken. The writ, on mere apprehension, is not maintainable, unless there is

material on record to indicate that the adverse action is imminent or there is real threat of invasion of rights of the petitioner. In the instant case, nothing of this sort has been placed on record.”

16) In a similar fact situation, this Court in Charanjit Singh Kala and others vs. Union of India and others [WP(C) No.2318/2022 dated 03.11.2022] has made the following observations:

“7.It is settled proposition of law that no writ petition can be filed on mere apprehension or without any cause of action which admittedly has not been accrued in the present case and thus the present petition, in light of the aforesaid facts and circumstances is not maintainable and is liable to be dismissed.”

17) Similarly, High Court of Kerala in Hamjad Ali vs. Union of India and others [WP(C) No.27165 of 2020 dated on 08.12.2020] observed as below:

“To answer the said question, it is only apposite to refer to a decision of the Hon’ble Apex Court in Manish S. Pardasani v. Inspector State Excise, reported in [2019(2) SCC 660]. In the said decision, the Apex Court while deprecating the judgment carrying certain directions issued in a writ petition filed apprehending issuance of an adverse order by an appellate authority held that the High Court should not have pre-empted the passing of any adverse order by an authority and further held that the settled position is that a court could stay or quash only those orders, which are impugned in the lis before it and in other words, only if an order is actually passed, that will be available for challenge and a writ petition founded only on an apprehension shall not be maintained under Article 226 of the Constitution of India. Certainly, this Court will not be justified in passing an order not to execute a detention order when the petitioner himself is not certain whether such an order has been passed against him.

In the said circumstances, we are of the view that this writ petition is premature. The petitioner could not have approached this Court merely based on an apprehension. The writ petition is, therefore, liable to fail and accordingly it is dismissed.”

18) High Court of Kerala in Parent Teachers’ Association and another vs. State of Kerala and others [WP(C) No.8695 of 2006 decided on 08.11.2010] has also ruled as below:

“In the facts and circumstances of the case, I do not think that the petitioners have any subsisting grievance which can be entertained in a petition under Article 226 of the Constitution of India. As rightly submitted by the learned counsel for the respondents, the apprehension of the petitioners voiced in the Writ Petition shows that the Writ Petition is premature. No rights of the petitioners are affected as of now. If any Notification is issued proposing the upgradation of any school, the parties concerned would get an opportunity to raise their objections. I do not think that the petitioners have made out sufficient

grounds for granting any relief to them at this stage.”

19) In identical circumstances, High Court of Orissa at Cuttack in M/S East End Technologies Private Limited vs. Union of India and others (WP(C) No.22223 of 2022) held as follows:

“Having heard learned Sr. counsel appearing for the petitioner and after going through the records, it appears that the petitioner has approached this Court by filing this writ petition in apprehension. Therefore, the writ petition is premature one. However, in the event any adverse order is passed by the authority, it is open to the petitioner to pursue its remedy before the appropriate forum in accordance with law.”

20) Having regard to what has been observed and discussed above, the present petition having been filed on unfounded apprehensions and being premature is dismissed with connected CM(s). Interim direction, if any, shall stand vacated.