(2019) 04 J&K CK 0036

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 1295, 1518, 1624, 1626, 1654, 1690, 1807 Of 2017, 52 Of 2018, IA No. 1 Of 2017, 01 Of 2018

Fiaz Mohd. And Ors — APPELLANT

Vs

State Of Jammu & Kashmir And Ors — RESPONDENT

Date of Decision : 03-04-2019

Acts Referred:
Constitution Of India, 1950 — Article 14, 21

Citation : (2019) 04 J&K CK 0036

Hon'ble Judges : Dhiraj Singh Thakur, J

Bench : Single Bench

Advocate : Ankur Sharma, Seema Shekhar

Final Decision : Dismissed

Judgement

1. The main ground of challenge in the present batch of petitions centres around the action of the State in taking a decision dated 21.06.2017 whereby the earlier policy decision dated 16.07.2014 has been withdrawn.

Briefly stated the material facts are as under:

2. The petitioners in this bunch of petitions were engaged as Ration dealers who were granted license for running fair price shops on commission basis. Petitioners were supposed to distribute ration to the ration card holders and in turn were entitled to receive a fixed amount of commission as per the policy.

3. It appears that the Cabinet took a decision authorizing the Consumer Affairs and Public Distribution (CAPD) Department to open 7697 departmental sale outlets in replacement of the existing fair price shops. The CAPD was authorized to engage 7697 Salesmen and 7697 Helpers to man these outlets on casual basis. However, the Government by virtue of the impugned Government Order dated 21.06.2017 has withdrawn ab nitio the policy which was declared vide Cabinet decision No.127/11/2014 dated 16.07.2014.

4. The main ground on which the order impugned has been challenged is that the Government could not have withdrawn by way of a Government Order a decision which was taken by the Cabinet and reflected in the Cabinet decision dated 16.07.2014.

5. Learned counsel for the petitioners stated that in case there was any such decision taken by the Cabinet, based upon which the Government order dated 21.06.2017 is passed, the petitioners would be out of the Court.

6. With a view to crystallize the issue, Mrs. Seema Shekher, learned Sr. AAG was directed to produce a copy of the Cabinet decision bearing No. 90/06/2017 dated 16.06.2017 which has now been produced and is taken on record.

7. It appears that the Cabinet did take a decision on 16.06.2017 based upon which the Government had issued the order dated 21.06.2017 by virtue of which the earlier policy decision taken to open 7697 departmental sale outlets and engaging an equal numbers of salesmen and helpers has been rescinded.

8. The issue that arises for consideration is whether the Government has the power to alter its policy and whether the same can be challenged by the petitioner and the grounds on which the same can be challenged.

9. The scope of judicial review in policy matters is no longer res integra. It is settled law that the Court would not ordinarily interfere with the policy decision of the executive unless the same can be faulted on the grounds of malafides, unreasonableness, arbitrariness or unfairness, in which case the policy would render itself to be declared unconstitutional. In

State of Punjab and others Vs Ram Lubhaya Bagga and others; (1998)4 SCC 117, it was held thus:-

".............When Government forms its policy, it is based on number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. it would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The Court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 When it restricts reimbursement on account of its financial constraints."

10. On similar lines was the pronouncement of Apex Court in case of Ugar Sugar Works Ltd. V/s Delhi Administration and others; (2001)3 SCC 635, wherein the Apex Court held as under:-

"The challenge, thus, in effect, is to the executive policy regulating trade in liquor in Delhi. It is well settled that the Courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc. Indeed, arbitrariness, irrationality, perversity and malafide will render the policy unconstitutional. However, if the policy cannot be faulted on any of these grounds, the mere fact that it would hurt business interests of a party, does not justify invalidating the policy. In tax and economic regulation cases, there are good reasons for judicial restraint, if not judicial deference, to judgment of the executive. The Courts are not expected to express their opinion as to whether at a particular point of time or in a particular situation any such policy should have been adopted or not. It is best left to the discretion of the State."

(Emphasis supplied)

11. In Balco Employees Union (Regd.) V/s Union of India and others; (2002)2 SCC 333, the Apex Court in paragraph 92 & 98 held as under:-

"92. In a democracy, it is the prerogative of each elected Government to follow it's own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the Court.

98. In the case of a policy decision on economic matters, the Courts should be very circumspect in conducting any enquiry or investigation and must be most reluctant to impugn the judgment of the experts who may have arrived at a conclusion unless the Court is satisfied that there is illegality in the decision itself."

12. This view has recently been reiterated by the Apex Court in Parisons Agrotech Private Limited and another Vs Union of India and others; (2015)9 SCC 657, The Court observed as under:-

"14. No doubt, the writ court has adequate power of judicial review in respect of such decisions. However, once it is found that there is sufficient material for taking a particular policy decision, bringing it within the four corners of Article 14 of the Constitution, power of judicial review would not extend to determine the correctness of such a policy decision or to indulge into the exercise of finding out whether there could be more appropriate or better alternatives. Once we find that parameters of Article 14 are satisfied; there was due application of mind in arriving at the decision which is backed by cogent material; the decision is not arbitrary or irrational and; it is taken in public interest, the Court has to respect such a decision of the Executive as the policy making is the domain of the Executive and the decision in question has passed the test of the judicial review."

13. Be that as it may, testing the facts of the present case on the touchstone of the law settled hereinabove, in my opinion, the Cabinet was within its jurisdiction to take a policy decision and to alter the decision earlier taken. The decision taken vide Government Order 21.06.2017 does not require any interference and does not suffer from any mala fides or perversity.

14. Petitions are found to be without any merit and are, accordingly, dismissed along with connected IAs.

