

(2003) 08 KAR CK 0069
In the Karnataka High Court
Case No : Writ Petition No. 36617 of 2002

H. Ramakrishna

APPELLANT

Vs

Deputy Commissioner and Others

RESPONDENT

Date of Decision : 13-08-2003

Acts Referred:

Karnataka Essential Commodities (Public Distribution System) Control Order, 1992 —
Section 12, 15

Citation : (2003) 5 KarLJ 386 : (2003) 4 KCCR 2938

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : H.T. Narendra Prasad, for the Appellant; B.P. Puttasiddaiah, High Court Government Pleader for Respondents-1 and 2 and H.G. Shivaramu, for Respondent-3, for the Respondent

Judgement

D.V. Shylendra Kumar, J.—The 3rd respondent in this writ petition is a person holding authorisation to distribute essential food items and other items under the Karnataka Essential Commodities (Public Distribution System) Control Order, 1992 (for short, "the Order"), for card-holders in Neerakallu Village, Madhugiri Taluk, Tumkur District.

2. The manner of distribution of food items by this authorised distributor was subject-matter of an enquiry before the 1st respondent-Deputy Commissioner particularly in the contest of complaints that the 3rd respondent had not supplied rice to 447 students of Government Higher Primary School, Neerakallu during the year 2001 and likewise had not supplied food items to 67 students of the Government Higher Primary School, Gollrahalli and also that the 3rd respondent has not distributed rice to 135 students of Government Higher Primary School, Chinnenahalli and so on. An enquiry was held by the Deputy Commissioner through the Tahsildar and based on the report of the Tahsildar the Deputy Commissioner who had initially placed the authorisation issued in favour of the 3rd respondent under suspension passed final orders on 23rd September, 2001 (copy at Annexure-A) whereby the Deputy Commissioner though recorded a

finding that the 3rd respondent had in fact misused the rice meant for distribution to the students of the schools under the Government Midday Meal Scheme and as such found him guilty of violations of the conditions of the authorisation, nevertheless imposed penalty of Rs. 5,000/-, cancelled the earlier order of suspension and the alternate arrangement that had been made for supply of such food items to the students and others during the period of suspension and restored the licence in favour of the 3rd respondent warning him not to give room for such irregularities in future. It is this order of the Deputy Commissioner that is sought to be challenged in the present writ petition by the petitioner who claims to be the President of one of the School Development Committee of Government Higher Primary School, Neerakallu and resident of the village.

3. Sri H.T. Narendra Prasad, learned Counsel for the petitioner submits that the Deputy Commissioner could not have passed an order of this nature as per Clause 12 of the Distribution Order that the Deputy Commissioner could only have cancelled the authorisation after having found that the 3rd respondent in fact had violated the terms and conditions of the authorisation and that restoring the authorisation in favour of the 3rd respondent is not in public interest, that the 3rd respondent is a person who had time and again committed such irregularities and had misused the authorisation and as such the Authority should have only cancelled his authorisation.

4. Statement of objections has been filed on behalf of the 3rd respondent. It is inter alia asserted that the petitioner has no locus standi to challenge the discretionary order passed by the 1st respondent, that the 1st respondent has discretion to levy penalty under Clause 12 of the Order and it is not incumbent upon the Deputy Commissioner to cancel the authorisation even when he finds that there are certain contraventions of the terms and conditions of the authorisation, that the petitioner himself has represented before this Court describing him as the President of School Development Committee while he is not the President of the Committee, that the MLA of the area is the Ex officio President of such a Committee as per Government Order dated 18th August, 2001, that the 3rd respondent having committed certain mistake that too not intentionally and such mistake being for the first time, the Deputy Commissioner is justified in mere levying penalty and warning him than totally cancelling the authorisation itself, that there was some collusion between the petitioner and the Headmaster of the school concerned who have not allowed the children from collecting the food items and it is under such circumstances it is indicated that the 3rd respondent had not distributed the food items etc.

5. Insofar as the question as to whether the petitioner is the president of the School Development Committee or not is concerned that is a matter which is not necessary to be looked into in this writ petition. Though learned Counsel for the petitioner submits that the petitioner was earlier elected as President of such committee by the parents of the students of the school who had been nominated

by the Government as per the earlier Government Order and that though the Government issued a subsequent Government Order superseding the earlier Government Order as per Government Order No. ED 1 PBS 2001, Bangalore, dated 18-8-2001 and though the MLA of the local area became the President of the School Committee by his position, the petitioner not having been disturbed from his position which he had earlier he has described himself in this capacity and in a post which he had held earlier it is not necessary to look into this aspect.

6. The question is as to whether the petitioner has the locus to maintain the present petition in the light of the objections raised by the 3rd respondent on the ground that this Court need not examine the complaint of the petitioner as the petitioner himself does not have such locus. Inasmuch as the petitioner has not sought for relief for himself but has projected that he is a person of the village, parent of the student attending the school and that the students are deprived food items supplied by the Government to the students studying in the school, I am of the view that independent of his claim the status of the President of the School Management Committee, petitioner has sufficient locus to maintain the petition of the present nature to point out any illegality on the part of the 1st respondent in the course of passing orders which may be to the detriment of the students studying in the school.

7. The impugned order clearly spells out that there is violation of the conditions of authorisation particularly the 3rd respondent having failed to distribute food items meant for school children. It appears such violation is not confined to one village or one school but spread over more schools in other villages. If that is so it is obvious that the 3rd respondent has been a violator of the conditions and has obviously misused the food items meant for distribution to school children. A serious lapse of this nature cannot be viewed lightly or can it be stated that this is a violation which necessarily calls for leniency on the part of the Deputy Commissioner.

8. Clause 12 of the Order does mention that the Authority has power to cancel the authorisation issued in favour of any person if it is found that there is any violation contravenes the terms and conditions of the authorisation. It does not speak of any other type of penalty or consequential action. Clause 15 no doubt provides for forfeiture of security deposit. But, it is in addition to any action that may be taken under Clause 12 of the Order. The discretion vested in the Authority requires to be exercised in a proper manner and for achieving the purpose for which it is so provided in respect of a violation of a condition which is innocuous or technical can be viewed leniently by the Deputy Commissioner and need not necessarily result in the cancellation of the authorisation. But the kind of violations by the 3rd respondent in the present case of misusing the food items meant for distribution to school children is a very serious violation and also reflects upon the integrity of the person who has been entrusted with the responsibility to distribute the essential food items to the citizens and is not a matter either to be viewed lightly or calling for leniency on the part of the Deputy

Commissioner in deciding the quantum/extent of penalty to be imposed on the violator.

9. In the circumstances I am of the view that the Deputy Commissioner has not exercised his discretion in consonance with the requirement of Clause 12 of the order and it requires to be quashed. The order (Annexure-A) dated 23-9-2002 passed by the Deputy Commissioner is hereby quashed and the matter is remanded to the Deputy Commissioner for a proper consideration of the entire issue and for passing appropriate orders under Clause 12 of the Authorisation Order.

10. As a consequence of quashing the order dated 23-9-2002 the earlier order of suspension that had been passed on the 3rd respondent stands revived and the alternate arrangement also shall be continued during such suspension period. It is open to the Deputy Commissioner to pass orders afresh in respect of the contravention after hearing the parties concerned and after giving proper opportunity to the holder of authorisation in particular.

11. Writ petition stands disposed of accordingly. Rule issued and made absolute.