

(2021) 08 SHI CK 0227

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 3451 Of 2021

Hem Singh

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 24-08-2021

Acts Referred:

National Food Security Act, 2013 — Section 12(2)(e), 24(5)(c), 40(2)(i)

Citation : (2021) 08 SHI CK 0227

Hon'ble Judges : Tarlok Singh Chauhan, J; Satyen Vaidya, J

Bench : Division Bench

Advocate : Abhimanyu Rathor, Poonam Gehlot, Ajit Sharma, Vinod Thakur, Shiv Pal Manhans, Bhupinder Thakur, H.S. Rangra

Final Decision : Allowed

Judgement

Satyen Vaidya, J

1. By way of instant petition, petitioner has prayed for the following substantive reliefs:

i) Issue a writ of certiorari to quash and set-aside the impugned orders/letters dated 14.10.2016 (Annexure P-8), 05.10.2018 (Annexure P-15) and

19.02.2020 (Annexure P-18) thereof.

ii) Issue a writ of certiorari to quash and set-aside the impugned order dated 29.04.2021 thereof.

iii) Issue directions for an independent authority to inquire into the allegations as described in the letter dated 18.8.2016 (Annexure P-7) for

ascertaining responsibility among respondent and fixing liability thereupon.

2. Petitioner is a Fair Price Shop holder in Khandla Panchyat, Tehsil Balh, District Mandi, H.P.

3. The Government of Himachal Pradesh, Food, Civil Supplies and Consumer Affairs Department, vide notification dated 02.08.2014 has notified

guidelines for opening of new Fair Price Shops, in supersession of all previous orders, instructions and guidelines, in compliance to Section 12 (2) (e),

Section 24 (5) (c), Section 40 (2) (i) of the National Food Security Act, 2013 and also in compliance to H.P. Specified Articles (Regulation of

Distribution) Order, 2003 (for short "2014 Guidelines").

4. Respondent No.3 allotted another Fair Price Shop to respondent No.6 at village Satoh in Gram Panchayat, Khandla, Tehsil Balh, District Mandi,

H.P. on 19.12.2016 in pursuance to the decision taken to this effect in the meeting of respondent No.3 held on 27.10.2016.

5. Petitioner objected to the above noted allotment of Fair Price Shop at Village Satoh in favour of respondent No.6 on the grounds that the allotment

was in violation of 2014 Guidelines. According to petitioner, neither the population nor distance criteria fixed in 2014 Guidelines was adhered. As

contended by petitioner, respondent No.5 had inimical relations towards petitioner and numerous complaints filed by petitioner against respondent No.5

were pending. Respondent No.5, in order to settle the scores had manipulated false reports and had provided incorrect data on the basis of which the

case of allotment of Fair Price Shop in favour of respondent No.6 was wrongly processed. Respondent No.3 had wrongly sought relaxation in respect

of distance norms from respondent No.2, which was also accorded in a mechanical manner without application of mind.

6. Petitioner assailed the allotment of Fair Price Shop at village Satoh, Tehsil Balh, District Mandi in favour of respondent No.6 before respondent

No.2 by preferring an appeal under Clause 17 of the Himachal Pradesh Specified Articles (Regulation of Distribution) Order, 2003. Respondent No.2

dismissed the appeal of petitioner vide order dated 5.10.2018. Petitioner further approached respondent No.1 under Clause 17 (1) (c) of the Himachal

Pradesh Specified Articles (Regulations of Distribution) Order, 2003 and assailed before him order dated 5.10.2018 passed by respondent No.2. The

Principal Secretary, (FCS&CA) to the Government of Himachal Pradesh (Respondent No.1) without touching the merits of the case, dismissed the

appeal of petitioner merely on the ground that it was time barred.

7. Petitioner approached this Court by way of CWP No. 584 of 2019 and thereby

assailed the order dated 16.1.2019 passed by respondent No.1.

Learned Single Judge of this Court vide judgment dated 7.1.2020 allowed the petition filed by petitioner. Order dated 16.1.2019 passed by respondent

No.1 was set-aside after condoning the delay in filing the appeal. The matter was remanded back to respondent No.1 for decision afresh in

accordance with law.

8. Respondent No.1 again dismissed the appeal of petitioner vide order dated 19.2.2020 by holding as under:

“6. I have considered the arguments of both the parties and found that the Government vide letter dated 04.10.2016 had granted relaxation for

opening a fair price shop at Satoh. A careful reading of the order dated 5.10.2018 passed by the Appellate Authority-cum- Director, Food, Civil

Supplies and Consumer Affairs, Himachal reveals very clearly that the approval was in fact necessitated by distance and for the ration card

attached/registered with the present functioning adjacent Fair Price Shop. Hence, after completing all the codal formalities, the District Level Public

Distribution Committee meeting was held on 19.12.2016 and on the basis of merit the District Level Public Distribution Committee has rightly

approved the Fair Price Shop in favour of Respondent No.4.

7. In view of the above facts and circumstances of the case, I do not find any merit in the appeal and accordingly the same is dismissed.”

9. Aggrieved against the order dated 19.02.2020 passed by respondent No.1, petitioner has approached this Court by way of instant petition.

10. We have heard learned counsel for the parties and have also gone through records.

11. Without touching the respective contentions of the parties, we propose to dispose of this petition only on the ground that the order dated 19.2.2020,

passed by respondent No.1, being bereft of any reasoning and non-speaking on material issues is not sustainable. The impugned order dated 19.2.2020

reflects complete non-application of mind, by the 2nd Appellate Authority, to the facts of the case. There is nothing in the impugned order dated

19.2.2020 which may suggest that the 2nd Appellate Authority had applied its mind to the issues relating to violation of 2014 Guidelines while allotting

Fair Price Shop to respondent No.6 in the same Panchayat area where petitioner had already existing Fair Price Shop. In our considered view, the

violation, if any, of 2014 Guidelines could have been easily ascertained by the 2nd Appellate Authority from the respective assertions of the parties as

well as the official records of the Department. Perusal of the impugned order reveals that no such exercise was undertaken by the 2nd Appellate

Authority and thus the impugned order is vitiated.

12. It is well settled that any order/decision, be it of administrative, quasi-judicial or judicial authority, needs to be supported by reasons. An

order/decision without reasons is unacceptable in a legal system based on rule of law. In absence of reasons, it cannot be ascertained as to on what

basis the order was passed.

13. A co-ordinate Bench of this Court vide judgment dated 3. 3.2021 passed in CWP No. 1119 of 2021 titled Babu Ram Vs. Himachal Pradesh

University, after discussing the legal position on the issue, has held as under:

“7. Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question

and the decision or conclusion arrived at. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision

reveals the “inscrutable face of the sphinx”, it can, by its silence, render it virtually impossible for the Courts to perform the appellate function or

exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system.

11. Arbitrariness in making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making the

order is only one of them. Every order passed by a public authority must disclose due and proper application of mind by the person making the order.

Application of mind is best demonstrated by disclosure of mind by the authority making the order and disclosure is best done by recording the reasons

that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority is clearly suggestive of the order

being arbitrary hence legally unsustainable.

13. It is well settled that the orders made by the appellate authority must contain reasons for the conclusions reached. Reference in this regard can

conveniently be made to the judgments rendered by the Hon'ble Supreme Court in R.P. Bhat vs. Union of India, AIR 1986 SC 1040 and Ram Chander

vs. Union of India, AIR 1986 SC 1173.”

14. Judging the impugned order dated 19.2.2020 at the touch-stone of above noted exposition of law, we have no hesitation in holding that the

impugned order dated 19.2.2020 passed by the Appellate Authority-cum-Secretary, (FCS&CA) (respondent No.1) is wrong, illegal and arbitrary.

15. The writ petition is thus allowed. Consequently, the order dated 19.2.2020 passed by respondent No.1 is set-aside with direction to decide the

appeal afresh by passing reasoned order in accordance with law.

16. The petition is disposed of in the aforesaid terms, so also the pending miscellaneous application(s), if any.