
(2020) 09 J&K CK 0024

In the Jammu And Kashmir High Court

Case No : Other Writ Petition No. 516 Of 2018, IA No. 01 Of 2018

Irshad Ahmad Malik

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 15-09-2020

Acts Referred:

Citation : (2020) 09 J&K CK 0024

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : M. S. Reshi, Feroz Ahmad Sheikh

Final Decision : Disposed Off

Judgement

Sanjay Dhar, J

1) Petitioner has filed the instant petition challenging order No.FCS&CA/FPS/123/2017 dated 28.07.2017, to the extent the same pertains to the issuance of Fair Price Shop Licence in favour of respondent No.4. The petitioner has also prayed for a direction to the respondents to decide his representation stated to have been already filed before the respondents. A further direction for issuance of Fair Price Shop Licence in favour of the petitioner has also been sought.

2) The case of the petitioner is that a Fair Price Shop was established by the Government in his premises for distribution of food grains and sugar etc. It is contended that there was an agreement between the petitioner and the respondents whereby it was agreed by the respondents that they shall continue to use and occupy the premises of the shop belonging to the petitioner's father without payment of any rent and in lieu thereof, the Government would issue a Fair Price Shop licence in favour of the petitioner.

3) It is contended that in the year 2016, the Government of Jammu and Kashmir Food Civil Supplies & Consumer Affairs Department issued a fresh policy for

opening of Fair Price Shops under Targeted Public Distribution (Control) Order, 2015, vide Government Order No.127-FCS&CA of 2016 dated 04.08.2016. Pursuant thereto, the petitioner submitted an application for grant of licence in his favour for running a Fair Price Shop. However, the same was not considered by the respondents compelling the petitioner to file a representation before the respondent No.2 imploring them to honour the promise that was extended by the respondents to the petitioner in lieu of allowing them to occupy his shop without payment of any rent.

4) It is further contended that while the representation of the petitioner was pending, the respondent No.2 issued the impugned order thereby granting licence for running a Fair Price Shop at location Chandgam, Village Chan Chandgam. Aggrieved of this action, petitioner challenged the same before this Court through the medium of OWP No.1637/2017. Vide order dated 22.11.2017, the following direction came to be passed by this Court:

"The issue involved in the instant writ petition has been determined by a Co-ordinate Bench of this Court in case titled "Bashir Ahmad Najar v. State of JK & Ors.' In OWP No. 1567/2017", wherein, at Paragraph Nos. 4 and 5, it has been held as under:

4. In view of the short controversy involved in the instant writ petition, the same is disposed of by giving liberty to the applicant to submit a specific complaint to Director, Department of Food Civil Supplies and Consumer Affairs and Public Distribution-Respondent No. 3 alongwith the copy of this order. On such complaint being filed, respondent no.3 shall accord consideration and dispose of the same on its own merits expeditiously, preferably within a period of two weeks from the date of receipt complaint along with copy of this order."

5) Pursuant to the aforesaid order of this Court, the petitioner is stated to have submitted a representation (Annexure-P6 to the writ petition) before respondent No.6 but when nothing substantial happened and no decision was taken by respondent No.2 on the representation of the petitioner, the instant writ petition came to be filed.

6) The respondents have resisted the writ petition by filing reply thereto. In their reply, respondents have submitted that none of the rights of the petitioner has been infringed and, as such, the instant writ petition is not maintainable. It has been further contended that the petitioner has raised disputed questions of fact which cannot be determined in exercise of writ jurisdiction. On merits it has been contended by the respondents that merely because petitioner had an expectation that Fair Price Shop licence shall be granted in his favour because he had provided rent free accommodation for storage of food grains to the respondents does not entitle him to any preference in grant of licence for running a Fair Price Shop in terms of the policy in vogue. It has been further contended that while issuing the impugned order, the respondents have acted in a just and fair manner after following due procedure and norms prescribed in the Government

Order No.127-FCS&CA of 2016 dated 04.08.2016.

7) I have heard learned counsel for the parties and perused the record of the case.

8) The grievance projected by the petitioner is that he had provided rent free accommodation to the respondents on their assurance that whenever new policy for grant of licence for running Fair Price Shops will come into operation, he will be granted licence for running a Fair Price Shop. It is not in dispute that the official respondents have used the premises belonging to the petitioner without paying any rent. The official respondents have not disputed the assertions of the petitioner in this regard nor have they disputed the document dated 18.09.2017, issued by Tehsil Supplies Officer, FCS&CA Department, Tahab Circle, whereby it has been certified that the department is using the shop belonging to the father of the petitioner from the year 2011 on rent free basis.

9) The contention of the respondents is that mere fact that the respondents were using the shop of the petitioner without paying any rent does not entitle him to grant of licence for running a Fair Price Shop as there is no such provision in the policy issued vide Government Order No.127-FCS&CA of 2016 dated 04.08.2016 but then the petitioner has placed on record the documents to show that he had applied for grant of licence for running a Fair Price Shop after coming into effect of aforesaid policy and had submitted all the requisite documents. It is not clear from the reply of the respondents as to whether the application of the petitioner for grant of licence for running Fair Price Shop has been accorded consideration by the respondents. It is not forthcoming from the record as to on what ground respondent No.4 was preferred over the petitioner while issuing the impugned order. In fact, when the petitioner had approached this Court through the medium of OWP No.1637/2017, a direction was issued to the official respondents to accord consideration to the complaint of the petitioner on its merits expeditiously within a period of two weeks. It seems the order passed by this Court has not been implemented by the official respondents before issuing the impugned order dated 28.07.2017.

10) It is true that it is the discretion of the respondents to grant licence for running a Fair Price Shop in favour of any person who fulfills the criteria and eligibility laid down in Government Order No. 127-FCS&CA of 2016 dated 04.08.2016 but then every eligible applicant has a right of consideration. From the reply of the respondents it is not forthcoming as to on what ground official respondents have preferred respondent No.4 over the petitioner and for that matter, whether the application of the petitioner has been considered at all. This has been done by the official respondents despite a clear direction from this Court that they will accord consideration to the complaint of the petitioner and pass an order.

11) A public authority has to exercise its discretion in accordance with the policy in vogue and in a just and fair manner. By not disclosing the reasons to the

petitioner for rejecting his application despite direction of this Court, the official respondents have acted in breach not only of the order of this Court but also the principles of fairness.

16) For the foregoing reasons, the writ petition is disposed of with a direction to the official respondents to accord consideration to the representation of the petitioner which is annexed as Annexure-P6 to the instant writ petition and pass a reasoned order thereon. While doing so, the official respondents shall spell out the reasons as to why they have preferred respondent No.4 over the petitioner while issuing the impugned order. The order, in this regard, shall be passed within a period of fifteen days from the date a copy of this order is made available to the official respondents. In case thereafter petitioner feels aggrieved of the order that may be passed by the official respondents, he shall be at liberty to again approach this Court.