
(2019) 11 J&K CK 0010

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 429 Of 2017

Javed Ahmad Another

APPELLANT

Vs

State Of Jammu & Kashmir And Others

RESPONDENT

Date of Decision : 05-11-2019

Acts Referred:

Citation : (2019) 11 J&K CK 0010

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Vivek Sharma, Seema Shekhar, B. S. Salathia, Javed Iqbal

Final Decision : Disposed Of

Judgement

Rajesh Bindal, J

1. The petitioner has approached this Court impugning the Government Order No. 48-FCS&CA of 2017 dated 09.03.2017, whereby Fair Price Shop License issued in favour of Sindh Raj Katoch s/o Bodh Raj Katoch for Sale Centre Jawari Ramban was cancelled and the same was directed to be issued in favour of the respondent No. 5.

2. Learned counsel for the petitioner while challenging the aforesaid allotment submitted that before allotment thereof to the respondent No. 5, no advertisement was issued. Applications were not invited from the eligible persons and in a hush hush manner, the allotment was made in favour of respondent No. 5 as he was a political favourite person. It was only for the reason that his name was recommended by the M.L.A. concerned. He further submitted that before allotment of the Fair Price Shop in favour of respondent No. 5, vide Government Order dated 04.08.2016, in supersession of all previous guidelines, fresh guidelines were issued for allotment of Fair Price Shops. However, the same were violated. The respondent No. 5 was not even eligible for allotment as the qualification required was minimum matriculation and not more than 10+2. The application did not mention any date on the application submitted by him.

Though the guidelines did not provide for any recommendation by the M.L.A/M.L.C., however, a column in the application provided for the same. The process of allotment followed by the official respondents did not inspire confidence as fair opportunity was not afforded to all eligible candidates. The allotment deserves to be quashed.

3. Learned counsel for the State submitted that the procedure as prescribed did not provide for issuance of any advertisement. Application was submitted by the respondent No. 5. The M.L.A/M.L.C of the area and the Sarpanch are the best persons who can recommend a candidate. This was the system being followed earlier. However, now it stands changed with the new guidelines. There is no allegation of mala fide. Even the petitioner is not eligible. New procedure was notified in March 2018.

4. Learned counsel appearing for the respondent No. 5 submitted that the guidelines issued by the State for allotment of Fair Price Shops have not been challenged. As there was necessity of having a Fair Price Shop in the area, the MLA finding the respondent No. 5 to be the most suitable person, recommended his name.

5. Heard learned counsel for the parties and perused the paper book.

6. The case pertains to allotment of Fair Price Shop for Sale Centre Jawari Ramban. It is the undisputed case on record that before allotment of the Fair Price Shop in favour of respondent No. 5, no public notice was issued inviting applications thereof. In fact a perusal of the impugned order dated 09.03.2017 shows that by same order Fair Price Shop license granted in favour of Sindh Raj Katoch s/o Bodh Raj Katoch was cancelled and the license was directed to be issued in favour of respondent No. 5. There is a communication dated NIL on record, produced along with objections filed by the State, whereby the inhabitants of the village Jawari had written to the Minister, Consumer Affairs and Public Distribution Department for cancellation of the license granted to Sindh Raj Katoch as he had been appointed as General Line Teacher. The recommendation was made for appointment of the respondent No. 5 as temporary retail ration dealer for the time being so that the supply of ration is not stopped. Apparently the Department also slept over the matter as despite Sindh Raj Katoch having joined as General Line Teacher in the Department on 21.05.2015, as stated by the residents of the village, his license was not cancelled for about a period of two years. Meaning thereby, a Government employee was allowed to continue as a licensee of a Fair Price Shop, as if there are no rules and regulations to be followed and any government employee can also carry on business, that too under a license from the State.

There is need to have proper system to rule out any such possibility either existing or in future.

7. The guidelines as were admittedly applicable at the time when the allotment was made in favour of respondent No. 5 provided the eligibility conditions and

further the fee payable for issuance of fresh license and for renewal thereof after every two years. Any desirous candidate can apply to the competent authority on a prescribed form, annexing all the relevant documents. There is an application on record filed by the respondent No. 5 for allotment of the Fair Price Shop. However, the same does not bear any date either by the applicant or even by the Assistant Director, Food Civil Supplies and Consumer Affairs, while recommending his case for allotment of Fair Price Shop. The occasion for filing any application would arise only if the residents of the area are made aware of the fact that license for any Fair Price Shop is available for allotment and all prospective candidates can file application. Whosoever fulfils the conditions, his candidature is required to be considered as per the norms fixed. It could not be explained as to how a column was added in the application regarding the recommendation made by the concerned M.L.A/M.L.C as from the norms laid down for allotment of the Fair Price Shops nothing is borne out in that regard. Regarding grant of license, the power is vested with the State. This is not the power which has been conferred on the residents of the village. A resolution by the Panchayat would certainly mean favoring any person who has closeness with party in power at the panchayat level. Such a system cannot be allowed to continue.

8. The plea raised by the State that the petitioner never approached the competent authority for issuance of license while fulfilling the conditions has no relevance once it is the undisputed case on record that the applications were never invited. Another plea raised regarding the eligibility of the petitioner, is also to be noticed and rejected for the reason that even if the petitioner may not get allotment, however, the rule of law has to prevail. The process followed or to be followed should inspire confidence. Allotment of license for Fair Price Shops cannot be in a pick and choose manner and only on the recommendations of the M.L.A/M.L.C concerned or the panchayat of the area. Even the M.L.A of the area concerned vide his undated recommendation had forwarded the representation of the inhabitants of the village for allotment of license in favour of the respondent No. 5.

9. As per the norms, bank guarantee and bank balance of certain amount is required. However, the bank statement of respondent No. 5 shows that in his account from September 2016 to December 2016, there were hardly any transactions. Bank balance as on 28.12.2016 was ₹ 115.12 and on January 4, 2017, huge sum of ₹ 2,40,000/- was deposited to claim eligibility. In September 2016, there are two transactions showing credit of ₹ 10,000/- and ₹ 1,000/- with narration as 'H/M GOVT PR SCHOOL CHAKA RAMBAN'. It may be because of some employment of respondent No. 5 with the school. This Court cannot comment on that as there is no explanation available on record.

10. For the reasons mentioned above, in my view there is merit in the present petition. The same deserves to be accepted as the process to be followed for allotment of any license, what to talk of license of Fair Price Shop, should inspire

confidence and all eligible candidates are required to be considered as per the norms fixed after inviting applications.

11. The impugned order dated 09.03.2017 is set aside to the extent of allotment of fair price shop in favor of the respondent No. 5, whereas there is no issue raised regarding cancellation of the license earlier granted in favour of Sindh Raj Katoch.

12. The writ petition is accordingly disposed of.