

(2002) 06 DEL CK 0005

In the Delhi High Court

Case No : CW 3790 of 2002 and CM 4690 of 2002

Jeevan Kumar and Another

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 10-06-2002

Acts Referred:

Multi-State Cooperative Societies Act, 1984 — Section 42, 45, 47, 77, 79

Citation : (2002) 100 DLT 391

Hon'ble Judges : Dalveer Bhandari, J;B.N. Chaturvedi, J

Bench : Division Bench

Advocate : Rakesh Tiku, for the Appellant; Naveen Chawla, for R-1, for the Respondent

Judgement

Dalveer Bhandari, J.—The petitioners have preferred this petition in which they have prayed that order dated 29.5.2002 be quashed being arbitrary and contrary to the Scheme of Multi State Cooperative Society Act 1984 (for short "MSCS Act, 1984").

2. The order dated 29.5.2002 has been issued by Ministry of Consumer Affairs, Food and Public Distribution, Government of India. In this letter, it is mentioned that the Govt. has, Therefore, decided u/s 47 of the MSCS Act in order to prevent the possibility of accumulation of further losses in Super Bazar, all purchases in respect of trading activity should be discontinued with immediate effect, until further orders. The existing inventory of all stores available with the Super Bazar, at present may be sold through its existing outlets as before till the stocks last.

3. The petitioners contended that the impugned letter dated 29.5.2002 suffers from total non-application of mind and is also malafide and arbitrary. The petitioners also contended that an exercise of issuance of such a letter u/s 47 is not in the interest of consumers. Mr. Tiku, the learned counsel appearing for the petitioners contended that merely because a statute enables the Government to take an action and issue certain directions would, not necessarily mean that such

directions have to be issued without taking into consideration all other relevant inputs and background.

4. Mr. Tiku also submitted that Section 47 is vocative of the Scheme of Section 41 and 45 of the MSCS Act which envisage that the day to day management be exercised by the chief executive to the guided by the decision of the board of directors.

5. It may be mentioned that the Minister of Consumers Affairs, Food and Public Distribution on the floor of the Parliament in reply to the discussion admitted that the main reasons for the losses in the Super Bazar were because of mis-management, lack of professional out look, excess staff, etc. expenditure and the increase in the salary of the employees. He also admitted that the corruption and disorder continue unabated in Super Bazar. He also admitted that there were gross irregularities in the purchase of spices, onions and Super Bazar had to suffer a huge loss. The case had to be handed over to the CBI.

6. The Minister also mentioned that charge sheets have been filed against 46 persons, 16 persons have been placed under suspension, an administrative enquiry has been instituted against 13 persons, action is on to impose major penalty against 24 persons and minor penalty against 243 persons in the Biscuit Scam. There are some documents to indicate that the huge losses have been incurred by the Super Bazar Cooperative Store. These were some of the reasons which impelled the government to take a decision to close the Super Bazar and the impugned order dated 29.5.2002 is a step in that direction.

7. Mr. Naveen Chawla, learned counsel for the respondent submitted that the Government of India was compelled to take decision for winding up of Super Bazar because of the huge losses which it was incurring for the last several years. He submitted that it is basically the policy decision of the Government which is not amenable to judicial review.

8. Mr. Chawla has also placed on record a copy of order passed by a Division Bench of this Court in writ Petition No. 6266/2001 on 12th December 2001. The said Writ Petition was filed by petitioner No. 2 Attar Singh. After hearing counsels for the parties at length, the Court observed that the Government is not in a position to infuse further funds and has recommended winding up of Super Bazar u/s 77 read with Section 79 of the Act.

9. The Division Bench in the said case also observed that this being a policy matter as regards reviving of the Super Bazar, no directions deserve to be passed on their behalf and the Writ Petition was dismissed. Petitioner No. 2 Attar Sigh deliberately concealed this material fact of filing the petition on similar grounds and relief before the Division Bench of this Court. There is no mention or reference of the said fact in this writ petition.

10. Mr. Chawla submits that the present petition is a gross abuse of the process of the Court and this Writ Petition deserves to be dismissed with exemplary

costs. Mr. Chawla submitted that when the petitioner, Attar Singh did not get any relief in that writ petition No. 6266/2001, the same petitioner, Attar filed this petition with similar prayer in this very Court without disclosing or giving any reference of Writ Petition number 6266 of 2001. We fail to understand why was the fact of filing the earlier petition C.W. No. 6266/2001 Attar Singh v. Super Bazar deliberately withheld or concealed from the Court. It is beyond compensation that Attar Singh did not know about this fact when he filed a subsequent Writ Petition No. 3790/2002 in this court with same relief. Mr. Rakesh Tiku submits that the petitioner, Attar Singh did not disclose this fact to him. In any event it cannot be accepted that the petitioner, Attar Singh did not know about the fate of his earlier writ petition No. 6266/2001.

11. The concluding para of the affidavit filed in support of the writ petition is false to the knowledge of the petitioner. The petitioner, Attar Singh has deliberately filed false affidavit before this Court.

The petitioner has not approached the court with clean hands and because of material concealment of relevant facts, this petition deserves to be dismissed with exemplary costs.

12. The Courts have consistently taken a view that all those who approach the Court must come to the court with clean hands. The petitioner is guilty of suppression and concealment of material facts and does not deserve any indulgence and consequently this petition is liable to be dismissed with exemplary costs.

13. In *Rajabhai Abdul Rehman Munshi Vs. Vasudev Dhanjibhai Mody*, their Lordships of the Supreme Court observed that a party who approaches the Court knowing or having reason to believe that if the true facts were brought to its notice this Court would not grant special leave, and persuades this Court to grant leave to appeal is guilty of conduct, forfeiting all claims to the exercise of discretion in his favor. It is his duty to state facts which may reasonably have a bearing on the exercise of the discretionary powers of this Court. Any attempt to withhold material information would result in revocation of the order, obtained from this Court.

14. In *Hari Narain Vs. Badri Das*, , their Lordships of the Supreme Court observed that it is of utmost importance that in making material statements and setting forth grounds in applications for special leave, care must be taken not to make any statements which are inaccurate, untrue or misleading. The special leave granted by the Supreme Court in this case was revoked and the appeal was, without dealing with the merits of the case dismissed.

15. In *Asiatic Engineering Co. Vs. Achhru Ram and Others*, , the court observed that no relief can be granted in a writ petition which is based on mis-statement or suppression of material facts.

16. Similar principles have been enunciated in English cases. *The King v. Williams*

(1914) 1 KB 608 and Rex v. Kensington Income Tax Commissioners (1917) 1 KB 486, which were considered with approval by the Supreme Court in number of judgments. Their Lordships of the Supreme Court also relied on these cases. In Udai Chand Vs. Shankar Lal and Others, . In this case the court revoked the SLP and vacated the stay order. The court while following the ratio of the aforementioned cases observed that the Supreme Court would be justified in revoking the leave to appeal if the same was obtained by making mis-statement of a material fact. Special leave already granted was revoked and consequently appeal was dismissed. This principle has been consistently followed in a number of other cases by various courts.

17. On consideration of the totality of the facts and the circumstances of the case we deem it appropriate to dismiss this Writ Petition with exemplary costs of Rs. 50,000/- to be paid within three months by petitioner No. 2, Attar Singh, whose earlier petition for similar relief was dismissed by a Division Bench of this Court. He deliberately concealed this material fact from this Court.

18. This Writ Petition and C.N. are accordingly disposed of.