

(1999) 06 KAR CK 0042
In the Karnataka High Court
Case No : Writ Petition No. 16583 of 1999

K.B. Dayananda

APPELLANT

Vs

Tahsildar and Another

RESPONDENT

Date of Decision : 25-06-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Karnataka Essential Commodities Licensing Order, 1986 — Section 13, 9 (2)

Citation : AIR 2000 Kar 37 : (1999) ILR (Kar) 3208 : (1999) 6 KarLJ 93

Hon'ble Judges : P. Vishwanatha Shetty, J

Bench : Single Bench

Advocate : Sri A.V. Gangadharappa, for the Appellant; Smt. V. Vidya, High Court Government Pleader, for the Respondent

Judgement

1. The petitioner, who is running a Fair Price Depot at Karagada Village, Kasaba Hobli, Belur Taluk, in this petition, has called in question the correctness of the show-cause notice dated 22nd of April, 1999, a copy of which has been produced as Annexure-C, and also the order dated 4th of May, 1999, a copy of which has been produced as Annexure-E, passed by the first respondent-Tahsildar.

2. The petitioner has obtained authorisation issued under the provisions of the Karnataka Essential Commodities (Public Distribution System) Control Order, 1992 (hereinafter referred to as "the Control Order"), for purchase, sales, storage for sale of foodgrains and other essential commodities from the Deputy Commissioner, Hassan District, on 6th of October, 1995 and the same was being renewed from time to time and it is made valid till 31st of December, 1999. The petitioner also has obtained retail dealers licence for the purpose of carrying on business in purchase, sale and storage for sale of essential commodities under the provisions of the Karnataka Essential Commodities Licensing Order, 1986 (hereinafter referred to as "the Licensing Order"), from the first respondent. The first respondent, by means of his show-cause notice Annexure-C dated 22nd of April, 1999, called upon the petitioner to show cause as to why action should not

be taken against him for violation of the provisions of the Control Order in the light of several charges levelled against him in the show-cause notice. Pursuant to the said show-cause notice, the petitioner, by means of his explanation dated 30th of April, 1999, a copy of which has been produced as Annexure-D, denied the charges levelled against him. Thereafter, the first respondent, by means of his order dated 4th of May, 1999, a copy of which has been produced as Annexure-E, impugned in this petition, has suspended the petitioner's licence issued under the provisions of the Licensing Order and directed that the distribution of essential commodities, which were entrusted to the petitioner, could be made from the month of May through Sri Mallegowda Hanike Gram Fair Price Shop.

3. Sri A.V. Gangadharappa, learned Counsel appearing for the petitioner, challenged impugned order Annexure-E on three grounds. Firstly, he submitted that the first respondent-Tahsildar has no jurisdiction or authority in law to pass the said order. Secondly, he submitted that the first respondent having issued notice Annexure-C charging the petitioner of the violation of the provisions of the Control Order, has seriously erred in passing the order Annexure-E suspending the licence granted to the petitioner under the provisions of the Licensing Order, as there was no show-cause notice issued informing contravention of the provisions of the Licensing Order. Finally, he submitted that the finding recorded by the first respondent that the petitioner had committed irregularities in the distribution of essential commodities to the public, is totally erroneous.

4. However, Smt. V. Vidya, learned Government Pleader, while strongly supporting the impugned order, pointed out that the order impugned being only an order of suspension, there is absolutely no justification for this Court to interfere with the said order in exercise of its extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India. She pointed out that the order impugned and also the show-cause notice Annexure-C, prima facie, indicate that the petitioner had committed serious irregularities in the distribution of essential commodities to the members of the public; and under these circumstances, since the action of the petitioner seriously causes public injury and the order made being only an order of suspension of licence issued to the petitioner under the provisions of the Licensing Order, if this Court interferes with the said order, it would cause serious public injury. According to her, in a matter like this, the authorities must be allowed to investigate into the matter and set right the working of the Public Distribution System in respect of the essential commodities. She further pointed out that the State Government, by means of its notification dated 25th of June, 1992 made in No. FTD 18 FCS 92 in exercise of the power conferred on it under sub-clause (g) of Clause 2 of the Licensing Order, has appointed the Tahsildars of Taluks excluding the informal rationing areas of the respective Taluks, to exercise the powers and perform the duties of the Licensing Authority under the Licensing Order for the areas specified in the said order; and in view of the said notification, the Tahsildar of Belur Taluk was entitled to exercise the power and perform the duties of the Licensing Authority

and, therefore, the first respondent has passed the impugned order Annexure-E in exercise of the power conferred under clause (2) of Order 9 of the Control Order suspending the licence. Therefore, she pointed out that there is no merit in the submission of the learned Counsel for the petitioner that the first respondent has no authority or jurisdiction in law to pass impugned order Annexure-E. She further pointed out that even if there is any infirmity in order Annexure-E, it is open to the petitioner to challenge the said order in an appeal as provided under Order 13 of the Licensing Order; and, therefore, this petition is liable to be dismissed on the short ground that the petitioner has an alternate remedy.

5. However, in response to the submission of the learned Government Pleader, Sri Gangadharappa, while reiterating his earlier submissions, would point out that the purpose and objects of the Control Order and the Licensing Order being distinct and separate, without the suspension of the authorisation granted to the petitioner under the Control Order, the cards assigned to the petitioner cannot be assigned to some other person or agency.

6. In the light of the rival contentions very seriously urged by learned Counsel appearing for the parties, the Question that would arise for consideration in this petition is, whether the impugned order and show-cause notice are liable to be interfered with by this Court in exercise of its jurisdiction either under Article 226 or under Article 227 of the Constitution of India?

7. Having elaborately heard the learned Counsel appearing for the parties, I have no hesitation to come to the conclusion that this petition is liable to be dismissed on grounds more than one. Firstly, I am unable to accept the submission of Sri Gangadharappa that order Annexure-E is the one passed without the authority of law and the first respondent has no jurisdiction to pass the said order. In a matter like this where the licence granted to a person either under the provisions of the Control Order or under the provisions of the Licensing Order, is suspended on account of certain charges, in my considered view, this Court should not normally interfere with such orders of suspension except on the ground that the authority, who has passed the order, has either no authority or jurisdiction to pass the order, or on the ground that the order of suspension has been made totally on account of extraneous and irrelevant considerations and it is mala fide. It is necessary to point that the Control Order of 1992 and the Licensing Order of 1986 are issued by the State Government in exercise of the power conferred on it under the provisions of the Essential Commodities Act. The object and the purpose behind the Essential Commodities Act, is to regulate and provide for proper distribution of essential commodities to the members of the public. It is needless to state that any mismanagement or irregularities in the distribution of essential commodities would have serious impact on the life and living of the members of the public and more particularly, the lower sections of the society who may not afford to buy the essential commodities by paying exorbitant price in open market. Under these circumstances, if the authorities, who are conferred with the power of grant, renewal, suspension and cancellation of licences,

whether it be under the provisions of the Control Order or under the provisions of the Licensing Order, this Court, as observed by me earlier, should not lightly interfere with the decision of the authorities. Therefore, having expressed my view as stated above, the only question that would arise for consideration in this petition, is as to whether the order Annexure-E is the one passed without the authority of law, as contended by Sri Gangadharappa and whether the show-cause notice Annexure-C is also liable to be interfered with by this Court.

8. Sub-clause (g) of Clause 2 of the Licensing Order relied upon by the learned Government Pleader in support of her plea that the Tahsildar, in the instant case, is the Licensing Authority, reads as follows:

" "Licensing Authority" means any officer appointed by the State Government in this behalf to exercise the powers and perform the duties of the Licensing Authority under this order and different Licensing Authorities may be appointed for different areas or for different classes of dealers in different areas of the State".

It is not in dispute that the petitioner has obtained a retail dealer's licence from the first respondent. This is clear from a copy of the licence produced by the petitioner as Annexure-B. Further, the notification dated 25th of June, 1992 in No. FTD 18 FCS 92, relied on by the learned Government Pleader clearly shows that the Government, in exercise of the power conferred on it under sub-clause (g) of Clause 2 of the Licensing Order, has appointed the Tahsildar of the Taluk as the Licensing Authority. Therefore, there cannot be any dispute that the first respondent-Tahsildar is the Licensing Authority. Sub-clause (1) of Clause 9 of the Licensing Order confers power on the Licensing Authority to cancel the licence granted to a person. Sub-clause (2) of Clause 9 of the Licensing Order empowers the Licensing Authority to suspend the licence, if he is prima facie satisfied that the conditions of the licence granted to a licensee or the provisions of the Licensing Order, are contravened. It is useful to extract Clause 9 of Licensing Order which reads as hereunder:

"9. Contravention of conditions of Licence.--(1) No holder of a licence issued under this Order or his agent or servant or any other person acting on his behalf, shall contravene any of the terms and conditions of the licence or the provisions of this Order and if any such holder or his agent or servant or any other person acting on his behalf contravenes any of the said terms or conditions of provisions, then without prejudice to any other action that may be taken against him, his licence may be cancelled by order in writing of the Licensing Authority in respect of one or more of the essential commodities covered by that licence:

Provided that no order shall be made under this clause unless the licensee has been given a reasonable opportunity of being heard.

(2) If the Licensing Authority is satisfied, prima facie that the conditions of the licence or the provisions of this order are contravened, he may, notwithstanding anything in sub-clause (1), suspend the licence pending enquiry for cancellation

of the licence".

Therefore, from the reading of sub-clause (2) of Clause 9 of the Licensing Order, it is clear that the Licencing Authority is empowered to suspend the licence granted if he is prima facie satisfied that the licensee has either contravened the conditions of the licence or contravened the provisions of the Licensing Order. Sub-clause (2) of Clause 9 of the Licensing Order does not contemplate giving of an opportunity before suspending licence. However, the proviso given to sub-clause (1) of Clause 9 of the Licensing Order contemplates giving of an opportunity of being heard to a person, who is likely to be affected, before cancelling the licence. In this situation, I am unable to accept the submission of Sri Gangadharappa that since the allegations were made in the show-cause notice Annexure-C that the petitioner has contravened the provisions of the Control Order, the first respondent could not have passed the impugned order Annexure-E under Licensing Order. Show-cause notice Annexure-C was issued for contravention of the Control Order with reference to the charges levelled against the petitioner in the said order. From that, it cannot be inferred or concluded that the petitioner had not contravened either the conditions of the licence issued under the Licensing Order or the provisions of the Licensing Order. If the first respondent, who is the Licensing Authority, notwithstanding the fact that he had issued a show-cause notice pointing out that the petitioner had also contravened the provisions of the Control Order, prima facie finds that the licence issued under the Licensing Order also should be suspended, pending enquiry, it is not possible to take the view that the said order is the one passed without the authority of law. The discussion made above would clearly show that the Tahsildar being the Licensing Authority, has the power either to cancel or suspend the licence issued under the provisions of the Licensing Order. If the said order is either illegal or erroneous, the remedy open to the person aggrieved is to prefer an appeal against the said order as provided under Clause 13 of the Licensing Order, which provides for an appeal to the Appellate Authority even against an order made suspending a licence granted. Therefore, without expressing any opinion with regard to the correctness of the order passed suspending the licence, as I am of the view that any expression of opinion by me may seriously affect the right of appeal provided to the petitioner under Clause 13 of the Licensing Order, I am of the view that the petitioner is not entitled to invoke the jurisdiction of this Court either under Article 226 or under Article 227 of the Constitution of India challenging the order Annexure-E. Further, I also do not find any merit in the second submission of Sri Gangadharappa that the first respondent having issued notice as per Annexure-C charging the petitioner of the violation of the provisions of the Control Order, could not have passed the impugned order suspending the licence granted under the Licensing Order. As noticed by me earlier, the authorities are not prevented from taking action against the petitioner who was given authorisation to distribute essential commodities under the Control Order and also the licence issued under the Licensing Order. Action can be taken for violation of the Control Order as well as

the Licensing Order. However, as rightly pointed out by Sri Gangadharappa, insofar as the action under the Control Order is concerned, it is the Deputy Commissioner, who is conferred with the power either to suspend or cancel the authorisation given under the Control Order. No doubt, the Tahsildar has no power under the Control Order either to suspend or cancel the authorisation given. In the instant case, there is no order made by the first respondent-Tahsildar either suspending or cancelling the authorisation given under the Control Order. He has only issued show-cause notice at Annexure-C. Admittedly, the petitioner filed objections to the said notice. If the first respondent passes any order adverse to the interest of the petitioner, the same can be challenged by the petitioner. Therefore, at this stage, I do not find any justification to quash the show-cause notice Annexure-C. Further, it is brought to my notice by the learned Government Pleader that pursuant to the notice Annexure-C, the Deputy Commissioner has initiated proceedings. I am also unable to accept the submission of Sri Gangadharappa that a person, who has got authorisation under the Control Order, can still carry on the business. In my view, unless a person holds a licence issued under the Licensing Order, he is not entitled to carry on business to deal with essential commodities even if he has an authorisation given under the Control Order.

9. In the light of the discussion made above, I am of the view that the petitioner is not entitled for the relief sought for by him in this petition; and this petition is liable to be rejected with liberty reserved to the petitioner to challenge the impugned order Annexure-E, if he so desires, before the Appellate Authority as provided under Clause 13 of the Licensing Order. In this view of the matter, all contentions urged by Sri Gangadharappa on merits with regard to the challenge made to order Annexure-E, are also left open to be urged before the Appellate Authority. However, since order at Annexure-E is only an order of suspension, I am of the view that it would be in the interest of justice to permit the petitioner, if he does not desire to file an appeal, to submit a representation/explanation to the order of suspension at Annexure-E before the first respondent-Tahsildar and request him to modify or revoke the order of suspension; and to direct the first respondent to consider the said representation, if made and dispose of the same within eight weeks from the date of receipt of the representation from the petitioner.

10. In the light of the discussion made above, I make the following:

ORDER

(i) This petition is rejected with liberty reserved to the petitioner to challenge the impugned order before the Appellate Authority.

(ii) If the petitioner makes a representation or sends explanation and seeks for revocation or modification of the impugned order Annexure-E, the first respondent is directed to dispose of the said representation and take appropriate decision in the matter on merits and in accordance with law, within a period of

eight weeks from the date of receipt of such representation.

11. However, no order is made as to costs.

12. Smt. V. Vidya, learned Government Pleader, is permitted to file her memo of appearance within four weeks from today.