

(2010) 09 KAR CK 0019

In the Karnataka High Court

Case No : Writ Petition No. 21629 of 2009 and Writ Petition No's. 21810-13 of 2009

K.S. Vemanna and Others

APPELLANT

Vs

Deputy Commissioner, Tahsildar, and Adeppa

RESPONDENT

Date of Decision : 30-09-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Essential Commodities (Public Distribution System) Control Order, 1992 — Clause 12 (1)

Citation : (2011) ILR (Kar) 492 : (2011) 2 KarLJ 71 : (2011) 4 KCCR 3181

Hon'ble Judges : S.N. Satyanaratana, J

Bench : Single Bench

Advocate : H.C. Shivaramu, for the Appellant; R.B. Satyanarayana Singh, HCGP for R 1 and R 2 and G.M. Chandrashekar, for R 3, for the Respondent

Final Decision : Allowed

Judgement

S.N. Satyanaratana, J.—This is third round of litigation by Petitioners.

2. The background of these cases are that based on the complaint by villagers of Mudulapalli and Kammaravaripalli villages against the third Respondent, Food Sheristedar and Food Inspector conducted enquiry on 27.07.2007 and found as many as nine irregularities. Based on the said report, mahazar was also drawn in the presence of the cardholders. Inspite of that, first Respondent proceeded to close the proceedings without holding any enquiry. Hence the Petitioners herein were forced to file petition in W.P. No. 16096/2007 (GM-PDS), which came to be allowed by an order dated 18.01.2008 with a direction to second Respondent to withdraw and cancel license of Respondent No. 3 for distribution of foodgrains and to make alternative arrangement. It is seen that the said order passed in W.P. No. 16096/2007 was modified in W.A. No. 377/2008 to the effect that Respondent No. 1 was directed to hold fresh enquiry and thereafter to take appropriate steps in accordance with the provisions of the Karnataka Essential

Commodities (Public Distribution System) Control Order, 1992, pursuant to that, the impugned order in Annexure - "G" is passed by Respondent No. 1. Perusal of the said order clearly discloses that Respondent No. 1 has not implemented the direction issued by the Division Bench of this Court in W.A. No. 377/2008 wherein the direction issued by this Court is as under:

7. It may not be proper for this Court while exercising the power under Article 226 to usurp the power of such Authorised Authority and to direct them to withdraw the authorisation.

8. Therefore, except to direct the Authorised Authority to pass appropriate further orders in the matter within a period of 15 days from the date of receipt of a copy of this order in accordance with law, no further orders are required. The writ petition is ordered accordingly.

3. Reading of the aforesaid direction clearly indicate that the first Respondent was directed to conduct an enquiry as contemplated under Clause 12(1) of the Karnataka Essential Commodities (Public Distribution System Control) Order, 1992, which reads as under:

12. Contravention of conditions of authorisation.-(1) No authorised dealer or fair price depot under this order or his agent or servant or any other person acting on his behalf, shall contravene any of the terms of conditions of the authorisation or the provisions of this order and if any such dealer or fair price depot or his agent or servant or any other person acting on his behalf contravenes any of the said terms of conditions or provisions, then without prejudice to any other action that may be taken against him, his authorisation may be cancelled by order in writing by the Authorised Authority in respect of one or more of the essential commodities covered by that authorisation:

Provided that no order shall be made under this clause unless the authorised dealer or fair price depot has been given a reasonable opportunity of being heard.

4. A bare reading of the aforesaid order clearly indicates it is incumbent upon the first Respondent to hold proper enquiry to the allegations made against the third Respondent, authorised distributor against whom the allegations of violation of the terms and conditions is alleged. After holding such enquiry, if first Respondent come to a conclusion that there is indeed violation of terms and conditions of license granted to him, the only course that is available to first Respondent is to take steps as provided under Clause 12(1) of the Control Order. The said provision does not indicate any discretion to Respondent No. 1 herein to impose such of the punishment either in the form of imposition of penalty or in any other manner, which is lower than the one contemplated under the aforesaid order.

5. Reading of Annexure - "G" clearly indicates that there is deliberate attempt on the part of the first Respondent in not implementing the direction issued by the Division Bench of this Court in its order dated 20.08.2008 in W.A. No. 377/2008

(GM-PDS). On the contrary, first Respondent has tried to dilute the same and has also taken the responsibility of interpreting the provisions of Clause 12(1) of the Control Order, with an intention to show favouritism to third Respondent. Reading of order clearly disclose that there is deliberate attempt on the part of first Respondent in trying to protect third Respondent in not implementing the order passed by the Division Bench of this Court and thereby diluting the same and trying to support the illegal act done by third Respondent by imposing a nominal cost of Rs. 1,000/-for a serious offence in floating the terms and conditions of the license granted to him for distribution of foodgrains, which is a serious offence.

6. In the facts and circumstances of the case, this Court finds that the order passed by first Respondent vide Annexure - "G" is not only an illegal order, but also an order passed floating direction issued by the Division Bench of this Court and with an intention to show favouritism to third Respondent. Therefore, while setting aside the order, stern warning and direction is given to first Respondent to hold enquiry against the third Respondent and pass necessary order as contemplated under Clause 12(1) of the Karnataka Essential Commodities (Public Distribution System Control) Order, 1992.

7. With these observations, petitions are disposed of.