

(1994) 01 KL CK 0043
In the High Court Of Kerala
Case No : W.A. No. 1303 of 1993-B

L. Jose

APPELLANT

Vs

K. Nesamony and Others

RESPONDENT

Date of Decision : 14-01-1994

Acts Referred:

Essential Commodities Act, 1955 — Section 3, 7

Citation : AIR 1994 Ker 300 : (1994) 2 ILR (Ker) 603 : (1994) 1 KLJ 329

Hon'ble Judges : K.S. Paripoornan, J;K.J. Joseph, J

Bench : Division Bench

Advocate : S.M. Prem, for the Appellant; C.P. Sudhakara Prasad and V.C. Jamesh, G.P., for the Respondent

Final Decision : Allowed

Judgement

K. J. Joseph, J.—The 5th respondent in O.P. No. 7573 of 1989 is the appellant in this appeal. The first respondent in the appeal had filed the above original petition challenging the validity of Exts. P2, P3, P4 and P5 orders passed by the respondents, wherein the above authorities have appointed the appellant herein as an ARD under clause 45(1) of the Kerala Rationing Order, 1966, in respect of the new ration shop sanctioned at a place - called Kallimoodu in Vellarada Panchayat in Neyyattinkara Taluk, for which applications were invited as per Ext. PI Notification.

2. The 5th respondent in the appeal, viz., the District Supply Officer, Thiruvananthapuram published Ext. PI notification wherein applications were invited from persons who are interested to conduct an authorised ration distribution outlet in Nayyattinkara Taluk at Vellarada Panchayat at a place called Kallimoodu in Ward VI of the said Panchayat. The locality specified in the said notification is Vellarada Panchayat in Neyyattinkara Taluk. Pursuant to Ext.PI notification, 10 persons had applied before the 5th respondent. The 5th respondent considered the relative qualifications of all the applicants and selected and appointed the appellant as the Authorised Retail Distributor of the

new ration shop sanctioned in the locality as per Ex. P2 order, wherein the District Supply Officer has selected the appellant herein mainly on the ground that he is a resident of the Vellarada Panchayat whereas the first respondent herein is not a resident of the said Panchayat, but a resident of Ottasekharamangalam Panchayat. Aggrieved by the said selection and appointment, the first respondent herein filed an appeal before the 4th respondent, District Collector, who considered the matter in great detail and confirmed Ext. P2 order passed by the District Supply Officer. Dissatisfied with Ext. P3 order passed by the District Collector, first respondent herein again had taken up the matter before the 3rd respondent, Commissioner of Civil Supplies, Board of Revenue, Thiruvananthapuram. The said authority also had considered shop sanctioned in the locality, viz., the Vellarada Panchayat since he is residing in another locality, namely; Ottasekharamangalam Panchayat. Aggrieved by the above orders, the first respondent herein questioned the validity of Exts. P2, P3, P4 and P5 orders before this Court.

3. A learned single Judge of this court considered the matter in exercise of the jurisdiction conferred by this Court under Articles 226 and 227 of the Constitution of India and came to the conclusion that the word "locality" in 3rd proviso to clause 45(2) (obviously a mistake for clause 45(1) cannot be given such restricted meaning as done in Exts. P3, P4 and P5. The learned Judge also held that scope of the word "locality" used in the above proviso cannot be held to coincide within the limits of a Corporation, Municipality or Panchayat and the meaning of the word "residence" in the locality cannot be restricted to an area in the Panchayat in case where the petitioner has offered a building for housing the ration shop in the ward for which notification has been specifically made and when he resides in the neighbourhood though it is outside the Panchayat. The learned single Judge further found that the term "locality" used in the proviso to clause 45(2) has to be understood as a place within a reasonable distance of the ration shop especially taking into account the convenience of the people of the area to have access to the shop. On the above reasoning, the learned single Judge quashed Exts. P2, P3, P4 and P5 and the 5th respondent herein was directed to consider the matter afresh in accordance with law after hearing both parties. Aggrieved by the said judgment, the appellant has come up in appeal.

4. We heard the learned counsel appearing on behalf of the appellant as well as the learned counsel appearing on behalf of the respondents. Admittedly, all the authorities constituted under the Kerala Rationing Order have considered the relative qualifications of the applicants on merit and came to the conclusion that the appellant herein is qualified to be appointed as authorised retail ration distributor in the newly sanctioned ration shop in the locality. In Ext. P2, the District Supply Officer evaluated the claims made by all the applicants in great detail and came to the conclusion that the appellant as well as the first respondent herein are more or less equally qualified. He has also found that both of them are solvent and experienced in the field of rationing. The said authority had taken into consideration the fact that the first respondent herein is a resident

of Ottasekharamangalam Panchayat whereas the appellant is a native and resident of Vellarada Panchayat, the locality in which the new ration shop has been sanctioned by the Department. He has also placed reliance on the interview conducted by him with the applicants and found that the appellant is better suited to be appointed as ARD in the instant case. It is on those grounds, the original authority selected and appointed the appellant as the authorised retail distributor for the ration shop in question. Even though the matter was taken up in appeal by the first respondent before the appellate authority, the appellate authority also considered the fact that the first respondent is a resident of Ottasekharamangalam Panchayat and not a resident of the Vellarada Panchayat in which locality the new ration shop had been sanctioned and the consideration weighed with the District Supply Officer was duly concurred by the appellate authority also and based on his residence in the Vellarada Panchayat, the appellate authority confirmed the selection and appointment of the appellant as the ARD for the ration shop newly sanctioned in the locality. The 3rd respondent again considered the entire matter in revision. The definite case of the first respondent before that authority was that even though he is residing away from the proposed shop, he is transacting his business at Kallimoodu where the ARD was sanctioned and on the basis of the above specified contention, the revisional authority came to the conclusion that the first respondent has conceded that he is not a resident of the locality, the revisional authority further considered the case of the first respondent based on his claim in doing business in the locality, the Vellarada Panchayat. After considering the matter elaborately in the light of the 3rd proviso to clause 45(1) of the Karala Rationing Order, the revisional authority also came to the conclusion that a person who is not normally resident in the locality shall not be appointed as ARD. The said authority also found that the first respondent has conceded that he is not a resident of the locality but he is only conducting his business in the locality and hence he is ineligible for consideration for appointment as the ARD in respect of the ration shop sanctioned in the locality viz.; Vellarada Panchayat. The matter was again considered at great length with reference to the 3rd-proviso to clause 45(1) of the Kerala Rationing Order by the Government in Ext. P5 order wherein the Government also concurred with the findings of fact arrived at by all the statutory authorities in respect of the residence of the applicant in the locality and upheld the orders passed by those authorities evidenced by Exts. P2 , P3 and P4.

5. Thus it can be seen that all the authorities constituted under the Kerala Rationing Order have considered the question in great detail with specific reference to the residence of the appellants in the locality and came to the conclusion that a person who has got residential qualification in the locality has preference in the matter of selection and appointment as ARD.

6. It is true that the word "locality" has not been defined under the Kerala Rationing Order. But the said word has to be understood with reference to the area where the new ration shop has been sanctioned and applications are invited

by the District Supply Officer.

7. The word "rationed area" has been defined under clause 2(16) of the order to mean any area in which the Kerala Rationing Order has been brought into force. Under clause 6 of the Order, Government may issue to any person or class of persons or to the public generally in any rationed area, ration documents for the purpose of rationing of such article. Again under clause 8, a person residing or intending to reside in any rationed area to whom a ration card has not been issued and who is not included in any family for which a ration card has been issued, may apply to the Taluk Supply Officer of the area in which he resides or intends to reside for a ration card. Again under clause 45(1) of the Order, for the purpose of distribution rationed articles, the District Supply Officer may appoint in respect of any area, any person as authorised retail distributor in respect of any rationed article. Again under clause 51, the District Collector may by order appoint in respect of any case, any person as an authorised wholesale distributor in respect of any rationed article. Thus, the word "area" has special meaning in the Kerala Rationing Order.

8. As can be seen from Ext. PI notification itself, the locality where the ration shop as sanctioned is shown as Vellarada Panchayat striking down the other localities noted therein viz. Municipality and Corporation, Ext. PI itself indicates that for the purpose of Rationing Order, locality has been understood as Taluk/ Municipality/ Corporation/Panchayat. In so understanding. Ext. PI, it cannot be said that the meaning of the word "locality" has been given a restricted scope. The meaning of the expression "normally resident in the locality" mentioned under clause 45(1) of the Kerala Rationing Order is the normal residence of the person in the Panchayat/Municipality/Corporation area, where "the ration shop is sanctioned by the authorities. That is how all the statutory authorities constituted under the Kerala Rationing Order and the Government understood the meaning of the word "locality". That is how the 1st respondent herein also understood and that is why he had clearly stated in his revision before the 3rd respondent which is extracted in Ext. P4 order that "it is the definite case of the revision petitioner that even though he is residing away from the proposed shop, he is transitioning his business at Kawllimoodu where the ARD was sanctioned". Admittedly, the first respondent is staying in Ottasekhara-mangalam Panchayat, whereas the appellant is staying at Vellarada Panchayat itself.

9. As stated earlier, the 1st respondent himself admits that he is residing away from the ration shop sanctioned in the area. His claim is not with reference to his residence in the locality, but nearness of his business place to the proposed ration shop at Kallimoodu. Nearness of the residence of the applicant to the shop offered by him for conducting the ration shop has no special significance unless the same is within the locality in which the ration shop is sanctioned by the authorities. What is stated under clause 45(1) 3rd proviso is that a person who is not normally resident in the locality shall not be eligible to hold an authorisation to run the ration depot under the Rationing Order. A Panchayat/Municipality/

Corporation has a definite area of operation. A person residing in one Panchayat and applying for appointment as an ARD in another Panchayat cannot have any preference for an appointment in the light of the amended proviso to clause 45(1) of the Rationing Order. In the light of the above finding, we respectfully disagree with the finding arrived at by the learned single Judge contrary to the above legal position.

10. The contention raised by the learned counsel appearing on behalf of the appellant that the finding of the learned single Judge that the shop offered by the appellant is in Ward No. VII, 41/2 K.Ms, away from the shop has sufficient force. It is admitted by both sides and as can be seen from Ext. P2 order passed by the District Supply Officer, Original Ward No. VI of Vellarada Panchayat has been changed to Ward No. VII due to bifurcation of the Panchayat after inviting application for dealership under Ext. P1 notification. Therefore the finding of the learned single Judge that the shop offered by the appellant in another Ward is not justified in the light of the documentary evidence produced in the case and in the light of the finding by the District Supply Officer in Ext. P2 order.

11. In a case where all the statutory authorities including the Government have considered the relative qualifications of the applicants for dealership under the Kerala Rationing Order, unless the concurrent decision arrived at by all those authorities are clearly illegal, patently wrong, perverse or passed without jurisdiction, or mala fide, this court may not be justified in interfering with such concurrent findings of fact arrived at by the statutory authorities, in exercise of the extraordinary jurisdiction of this court under Articles 226 and 226 of the Constitution of India. We see sufficient force in the submission made by the learned counsel appearing on behalf of the appellant that the interference with the impugned orders by the learned single Judge in this case is uncalled for.

In the result, the judgment of the learned single Judge under appeal is set aside and the original petition is dismissed. The appeal is allowed, but there will be no order as to costs.