
(2001) 01 KAR CK 0066
In the Karnataka High Court
Case No : Writ Petition No. 8345 of 1999

M. Siddaramaiah	Vs	APPELLANT
B. Nagaraju and Others		RESPONDENT

Date of Decision : 12-01-2001

Acts Referred:

Citation : (2001) ILR (Kar) 752 : (2002) 2 KarLJ 151 : (2001) 1 KCCR 468

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : H.C. Shivaram, for the Appellant; S.R. Hegde Hudlamane and G. Nagarajulu Naidu, High Court Governemnt Pleader, for the Respondent

Final Decision : Allowed

Judgement

D.V. Shylendra Kumar, J.—The petitioner in this petition is a person who had been granted a licence under Clause 3 of the Karnataka Essential Commodities (Public Distribution System) Control Order, 1992 ("the Control Order" for short), to run a fair price depot at Gayathri Beedi, Mandya Town. The petitioner is granted such a licence as per the order dated 25-1-1999 passed by the Deputy Commissioner for Food and Civil Supplies, Mandya District, Mandya as per the order at Annexure-A.

2. It is claimed by the petitioner that he has been running the fair price shop thereafter and he is now aggrieved in view of an order dated 23-2-1999 purporting to have been passed by the second respondent in Case No. MFCS:208:RP:98 granting an interim order of stay of the order passed by the Deputy Commissioner on 25-1-1999, by exercising the powers under Clause 20 of the Control Order, in a revision petition which has been presented by the first respondent before the Government questioning the legality of the order dated 25-1-1999 passed by the third respondent-Deputy Commissioner.

3. The petitioner has sought for quashing of the entire proceeding pending before the Government in No. MFCS:208:RP:98 including the interim order dated

23-2-1999, consequent to a declaration that the proceedings before the second respondent are not maintainable and for such other consequential orders.

4. This Court, by an interim order dated 15-4-1999, had granted stay of the impugned order as also the proceedings before the second respondent and the stay order has been continued till now.

5. Sri H.C. Shivaram, learned Counsel appearing on behalf of the petitioner has raised several contentions to impugn the legality and validity of the order dated 23-2-1999, as also the maintainability of the proceedings in the revision case No. 208 of 1998 before the Government, in which the said interim order has been passed.

6. It has been firstly contended that the power to exercise revisional jurisdiction under Clause 20 of the Control Order by the Government can be exercised only in such situations where the authority or officer whose order or proceedings are sought to be examined, has passed an order in the exercise or declining to exercise the power to suspend or cancel any authorisation issued and not in all situations. Clause 20 of the Control Order reads as under:-

"20. Power to call for and examine records.--The Government may suo motu or on an application made to it by an aggrieved person, at any time call for and examine the record of any enquiry or proceedings of any officer exercising or failing to exercise the powers under this order, to suspend or cancel any authorisation issued for the purpose of satisfying itself as to the legality or the propriety of any decision or order passed by such officer and as to the regularity of the proceedings of such officer may pass such order thereon as it thinks fit, provided that the State Government shall not pass any order under this clause which adversely affects any person unless such person has been given a reasonable opportunity of being heard".

It is the submission of the learned Counsel for the petitioner that the order, which is the subject-matter of revision before the Government, passed by the Deputy Commissioner for Food and Civil Supplies, Mandya District, is an order granting a licence in favour of the petitioner from amongst as many as 21 aspiring applicants and the first respondent in this writ petition who has presented the revision before the Government, was also one amongst the applicants and the Deputy Commissioner, vide his order dated 25-1-1999 has granted the licence in favour of the petitioner and has rejected the applications of others and as such the order being one granting a licence under Clause 3, cannot be made the subject-matter of revision under Clause 20 of the Control Order.

7. The learned Counsel has also contended that the revision at the instance of the first respondent in his individual name, is not maintainable inasmuch as there was no valid authorisation in favour of the first respondent who was Secretary of the Society at the relevant point of time, to file such petition and the above order has been made by the Deputy Commissioner on the application

filed in the name of the first respondent, B. Nagaraju in his individual capacity, who has now become the President of the Society. In this view of the matter, the submission is that the first respondent could not have been termed as "the person aggrieved" within the meaning of Clause 20 of the Control Order to maintain the revision petition.

8. The learned Counsel for the petitioner has also brought to the notice of the Court that the Society, which was an applicant before the Deputy Commissioner amongst others, had suffered certain disqualification, namely the inability to prove its financial viability which is a pre-condition for consideration of the application and the Deputy Commissioner has rightly disqualified the Society and the question of examining merit or the validity of the order at the instance of such a person does not arise.

9. The learned Counsel has also contended that even assuming that the subject-matter could be one coming within the scope of Clause 20 of the Order, even then the Government could not have passed an ex parte interim order of stay without giving an opportunity to the petitioner before passing such an order having regard to the language of Clause 20 of the Control Order, particularly the proviso which says that "State Government shall not pass any order under this clause which adversely affects any person unless such person has been given a reasonable opportunity of being heard".

10. Sri S.R. Hegde Hudlamane, learned Counsel appearing on behalf of the first respondent, has countered the submissions made on behalf of the petitioner by contending that the first respondent had presented the revision petition before the Government being mainly aggrieved by the action of the third respondent-Deputy Commissioner in withdrawing as many as about 190 ration cards from his shop, which in turn, appears to have been allotted in favour of the petitioner. However, this is disputed by the learned Counsel appearing on behalf of the petitioner by saying that what has actually been withdrawn from the first respondent-Society was only 104 cards and they have been in turn allotted to the petitioner. Sri S.R. Hegde Hudlamane very fairly submits that it was neither the intention nor is it their case to question the legality of the order dated 25-1-1999 passed by the Deputy Commissioner for Food and Civil Supplies, Mandya District, Mandya for granting licence to run a fair price shop by the petitioner, but rather only interested in questioning the correctness of withdrawal of ration cards from their shop.

11. Unfortunately the record does not substantiate this stand inasmuch as the order impugned under Annexure-A, namely the interim order passed by the Government in the Revision Petition No. 208 of 1998 expressly mentions that the subject-matter of the revision petition is the order dated 25-1-1999 passed by the third respondent-Deputy Commissioner and also states that what has been stayed is only the order dated 25-1-1999.

12. Sri Hegde farther submits that in view of his limited submission, he would

not enter into any controversy on the issue.

13. The learned Government Pleader Sri Nagarajulu Naidu appearing on behalf of respondents 2 to 4 has submitted that the Government being the highest authority, has the power to pass orders as has been passed under Annexure-J granting an order of stay and it is his further submission that the Government has the power to .revise and modify or vary the order which it has occasion to look into and examine the correctness. It also has the power to grant an interim order before passing the final order on hearing both sides and at the stage of passing interim order and for the limited purpose, it is not incumbent upon the Government to hear the aggrieved person and then only pass an order of stay. The learned Government Pleader submits that exigencies of the situation may require passing of interim order and granting of opportunity later on either to confirm the same or cancel the same even while passing final order in the matter.

14. It is true that the Government is the highest executive authority in the State and all other officers who are statutory functionaries, function under the provisions of the Karnataka Essential Commodities (Public Distribution System) Control Order, 1992 ("the Control Order" for short) are officers/authorities subordinate to the Government. But, nevertheless, when the Government has framed certain rules or issued certain statutory orders, which lays down a certain procedure to be followed in the matter of exercise of power by the various authorities functioning under such rules or statutory order, then even the Government, while functioning and exercising the functions and powers under the Control Order, is bound by the procedure envisaged under this order and the Government is not free to adopt any ad hoc procedure in a given case departing from such rules or statutory Orders. For this purpose, the definition of "Government" under Clause 2(m) of the Control Order means, "the Government which acts within the bounds of the powers and authority as have been given under the Karnataka Essential Commodities (Public Distribution System) Control Order, 1992". If the Government acts either in contravention of the provisions of this order or while exercising the power and performing duties under this provision, it will have to be within the purview of this order, inasmuch as, otherwise such action of the Government becomes one without authority of law and without jurisdiction.

15. However, I do not wish to go into the several aspects of the matter urged on behalf of the petitioner, as I am of the view that on a proper understanding of Clause 20 of the Control Order, it becomes very clear that the scope of suo motu power to be exercised under Clause 20 by the Government can only be in respect of those situations wherein the authorities below have either exercised or failed to exercise the power to suspend or cancel any authorisation issued and not in all other cases. I am of the view that the learned Counsel for the petitioner is justified in submitting to the Court that this is the scope of power to be exercised under Clause 20 of the Control Order. Language of Clause 20 of the Control Order also is quite clear and indicates that it is designed only for such situations

wherein the power to suspend or cancel any authorisation is either exercised or declined to be exercised by the authorities. In fact, as against an order rejecting an application under Clause 3 of the Control Order as has happened in the instant case in respect of the first respondent, a remedy of appeal under Clause 17 of the Control Order is provided. Having regard to this express provision, it can be safely presumed that the scope and power under Clause 20 of the Control Order, is confined to situations where the authorities below have either exercised or declined to exercise the power either to suspend or cancel any authorisation and not in respect of other cases and at any rate, in a situation where the licence has been granted in favour of the petitioner.

16. In the light of the provisions of Clause 20 of the Control Order, I am of the clear view that the Government has no jurisdiction to entertain a revision petition in respect of the order dated 25-1-1999 passed by the third respondent-Deputy Commissioner granting a licence under Clause 3 of the Control Order. It is however made clear that if the first respondent has made any grievance before the Government on a subject-matter which is independent of and not forming part of the order dated 25-1-1999 passed by the Deputy Commissioner, it is open to the Government to examine the correctness or otherwise of such order so long as they are within the four corners of law and within the scope of the Control Order.

17. In this view of the matter, this writ petition is allowed. The order at Annexure-J, dated 23-2-1999 in Case No. MFCS:208:RP:98 passed by the second respondent is quashed. The second respondent is restrained by issue of a writ of prohibition from entering into the merits of the order dated 25-1-1999 passed by the Deputy Commissioner for Food and Civil Supplies, Mandya District, Mandya in Order No. S6:CR:21:98-99 (vide Annexure-A). Rule made absolute. No order as to costs.