
(2008) 07 OHC CK 0017

In the Orissa High Court

Case No : Writ Petition (C) No. 7219 of 2008 & Writ Petition (C) No.7219 of 2008

Maguni Charan Parida and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 15-07-2008

Acts Referred:

Citation : (2008) 2 OLR 305

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Advocate : Mahendra Kumar Das, Sidheswar Mallik, Susmita Rout, Minarani Das, Barija Das, Jateswar Nayak and Subrat Kumar Das, for the Appellant;

Judgement

M.M. Das, J.—15.07.2008 - Heard learned Counsel for the Petitioners an the learned Counsel for the State.

2. The grievance of the Petitioners is that though they were a licensees as retailers under the P.D.S. (Control) Order, 2002 for the year 2007-08 and they made applications for renewal of their licences for the period 2008-09, which have been allowed, as are reflected from the copies of the tally Registers under Annexure-1 series, quota of essential commodities is not being released in their favour for which they are unable to function as retailers though they have obtained the licences. In several cases, it has been held by this Court that non-release of quota, in effect, defuncts the licence granted and if quota is not released in favour of the retailer, he cannot get the benefit of the licence in any way.

3. Mr. Das, learned Counsel for the State, on the contrary, submits that after the P.D.S. (Control) Order, 2008 has come into operation, the retailers/sub-wholesalers/wholesalers are to be appointed in order of preference as mentioned therein, where the first preference is given 10 the Grama Panchayat, there after Co-operative Societies and then to women self help group and other self help groups. It is for that reason, even though the Petitioners" licences might have

been renewed, but quota has not been released.

Mr. Das, learned Counsel for the State also relies upon the decision of this Court in the case of Smt. Tulasi Panda Vs. State of Orissa and Others, and contends that release of quota is an administrative action and non-release of the same cannot be considered to be an actionable claim.

4. On perusal of the said decision, I find that the Petitioners therein was a Sub-wholesaler in Kerosene and was granted licence under Kerosene Control Order, 1962. The allegation of the Petitioners therein was that though she was allowed to supply Kerosene to 19 retailers, but subsequently, all of a sudden, the Collector appointed the opp. party No. 5 therein as a Sub-wholesale Dealer and her quota was reduced. In that context, this Court held that claiming of quota is fixed by administrative order, which necessarily depends on the need of the consumers. No where within the four corners of the said decision, this Court has held that non-issuance of the quota is an administrative order and cannot be considered to be an actionable claim. I am, therefore, unable to accept the contention raised by Mr. Das, learned Counsel for the State.

5. The P.D.S. (Control) Order, 2008 came into operation from 19.3.2008 and even thereafter, as it, prima facie, appears from Annexure-1 series, the Petitioners's licences have been renewed up to 31.3.2009. Therefore, the contention of the learned Counsel for the State at this stage cannot be accepted.

6. This writ petition is disposed of with a direction upon the Sub-Collector, Puri to look into the grievance of the Petitioners and release the quota of essential commodities, if, in fact, their licences have been renewed, up to 31.3.2009. The Sub-Collector shall act within a period of two weeks from the date of production of the certified copy of this order along with a copy of the writ petition with all its annexures before him by the Petitioners.

7. It shall be the responsibility of the Petitioners to produce a certified copy of this order along with a copy of the writ petition with all its annexures before the Sub-Collector for compliance of the above direction.

8. Urgent certified copy of this order be granted as per rules.

9. Petition disposed of.