

(2021) 01 CHH CK 0019
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 1903 Of 2020

Mamta Devi

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision : 20-01-2021

Acts Referred:

Essential Commodities Act, 1955 — Section 3
Constitution Of India, 1950 — Article 226

Citation : (2021) 01 CHH CK 0019

Hon'ble Judges : Goutam Bhaduri, J

Bench : Single Bench

Advocate : A.N. Pandey, Richa Shukla, Satish Gupta

Final Decision : Allowed

Judgement

Goutam Bhaduri, J

Heard

1. Challenge in this petition is to the order dated 26.06.2020 (Annexure P-1) and subsequent advertisement dated 29.06.2020 (Annexure P-2) whereby

the allotment of fair price shop of the petitioner was canceled.

2. Learned counsel for the petitioner would submit that on the basis of a report of the Food Inspector which was made behind the back of the

petitioner, the initial suspension of the fair price shop was passed by respondent No.3 on 17.12.2019 and subsequently the show cause notice for

cancellation of shop was issued on 11.06.2020 by Annexure P-4. It is stated that the petitioner thereafter applied for the document on which the

suspension was ordered, however, the same was not supplied to him and without giving any opportunity of hearing, the cancellation of the fair price

shop was passed on 29.06.2020. Thereby, gross violation of rules of natural justice was committed as required under the Chhattisgarh Public

Distribution System (Control) Order 2016 (for short "the Order, 2016") and the order therefore cannot be sustained. It is also contended that on

the basis of wrong cancellation of allotment of fair price shop, the advertisement was also issued for fresh allotment, therefore, such advertisement

would also be bad and illegal.

3. In reply to it, the State counsel would submit that on the basis of the report of the Food Inspector, irregularities were found and the report was made

by Annexure R-2 by the Food Inspector. It is further stated that such report was made on the basis of panchnama and statement given by villagers.

Thereafter, due enquiry was conducted and the cancellation order is based on that. Therefore the enquiry was conducted and petitioner was heard

which is evident from the panchnama and thereafter order was passed. Therefore, the order is well merited and the petitioner do not deserve any

relief.

4. Learned counsel for the intervener Lal Sai Ekka and others, supports the case of the respondents and would submit that an alternative remedy to

file an appeal against the cancellation is available under the Order, 2016, therefore, this petition would not be maintainable.

5. Perused the documents filed by the petitioner. The document shows that on 11.06.2020, the petitioner was served with a show cause notice as to

why the allotment of the fair price shop be not canceled and the petitioner was directed to file reply. Thereafter, the document Annexure P-6 shows

that the petitioner sought for the documents and applied for certified copy if document on what basis the cancellation/ suspension on 17.12.2019 was

affected. There is nothing on record placed by respondent to show that those documents were supplied to him. This is evident from note sheet

Annexure P-7. The first note sheet is dated 11.06.2020 by which the show cause notice was issued and thereafter the second note sheet is of

29.06.2020, the extract of note sheet records as under :

"OFFICE OF THE ()

CHHATTISGARH

Letter No.....

. . ./ ./

Â 6. The document on which the State has placed reliance Annexure R-2 is a report made by the Food Inspector Balrampur to the S.D.O. wherein

certain allegations have been clamped on the petitioner. The said document is dated 18.11.2019 and along with it, certain statement of the villagers are

also on record. It appears that the Food Inspector might have placed reliance on such statement and thereafter reported it to the S.D.O.

7. The State of Chhattisgarh has framed the Order, 2016 in exercise of power under Section 3 of the Essential Commodities Act, 1955 and the

Chhattisgarh Food and Nutritional Security Act, 2012 named as Chhattisgarh Public Distribution System (Control) Order 2016. Order 16 speaks about

Penalty. The relevant part is read as under :

â??16. Penalty - (1) If shopkeeper contravenes any provision of agreement, then he shall be liable for suspension or cancellation by the officer

authorized for allotment of Fair Price shop. The time limit for redressal of such cases shall not exceed three months.

2. During inspection of the shop, if any irregularity is found, then without prejudice to any action the whole or part of amount deposited by shopkeeper

as security, shall be forfeited in favour of the State.

3. Before cancellation of authority letter of Fair Price Shop or forfeiture of whole or part of security, Food Controller or Food Officer of district or

Sub-Divisional Officer of sub-division shall issue show cause notice to Fair Price Shopkeeper and after giving an appropriate opportunity of being

heard shall decide within a period of a month from issuance of show cause notice.â??

(8) Reading of the said Rule would show that before cancellation of authority of fair price shop or forfeiture of whole or in part, the fair price shop

keeper must be given an appropriate opportunity of being heard after the show cause notice is issued.

(9) The show cause notice for suspension was issued on 11.06.2020 (Annexuer P-4). The suspension was ordered on 17.12.2019. The document

shows that the petitioner has applied for certified copy of the entire documents on 15.06.2020 by Annexure P-6 which bears the endorsement. The

note sheet which is placed on record shows that on 11.06.2020 the show cause notice was issued and thereafter the orders have been passed on

29.06.2020. The petitioner has filed the document in the reply wherein it is stated that the petitioner has not violated any provision of the Order, 2016, which is filed as Annexure P-5. The show cause notice issued on 11.06.2020 (Annexure P-4) only speaks that why not the cancellation order be passed under the Order, 2016 as per clause 16(1). The nature of contravention what has been made has not been reflected. It is obvious that if the cancellation of fair price shop is proposed then the parties should be given the opportunity to meet the allegations and the show cause notice itself. It cannot be vague reason for which cancellation is proposed and the allottee can't be taken by surprise to envelope the subsequent afterthought which may crop in during the course of time. Therefore, in order to reply the show cause notice as to which of the provisions of the Order, 2016 were flouted, the authorities should have been conscious enough to disclose detail set of charges. It cannot be vague or ambiguous which exists in this case by way of Annexure P-4. Apart from these facts before cancellation of the fair price shop, Rule 16 sub rule 3 of the Order, 2016 contemplates that after giving an appropriate opportunity of being heard, the cancellation case would be decided. The note sheet placed as Annexure P-7 do not reflect that appropriate opportunity of being heard was granted to the petitioner, therefore, there is a gross violation of rules of natural justice which also mandated by the provision clause 3 of Rule 16 of the Order, 2016. Consequently, this Court can very well exercise the power vested under Article 226 of the Constitution of India when it prima facie established that there is a breach of gross violation of rules of natural justice.

10. The intervener has pointed out the document Annexure A-3 dated 16.11.2019 to show that certain particular violations were made. But the note sheet placed on record of 11.06.2020 neither it whispers the existence of such document nor the same is placed by the State before this Court.

Therefore, the existence of Annexure A-3 filed by the intervener appears to be doubtful and it appears that might have subsequently inserted in the document.

Â In a result, since the order dated 29.06.2020 (Annexure P-1) appears to be passed without giving an appropriate opportunity of being heard to the petitioner, the same cannot be sustained and accordingly it is set aside. The note sheet further shows that on the same date publication was made for

fresh allotment and the genesis is the cancellation of allotment. Therefore, since the original order of cancellation is set aside, the subsequent

procedure of the impugned advertisement Annexure P-2 dated 29.06.2020 also cannot be sustained, which is also set aside. The consequence of such

cancellation would follow.

Â In view of the above, the petition is allowed.