

(2018) 11 J&K CK 0123

In the Jammu And Kashmir High Court

Case No : Other Writ Petition (OWP) No. 430 Of 2018, IA No. 01 Of 2016

Manzoor Ahmad Dar @APPELLANT@Hash State Of Jammu & Kashmir And Others

Date of Decision : 30-11-2018

Acts Referred:

Essential Commodities Act, 1955 — Section 3
National Food Security Act, 2013 — Section 12, 12(2)
Constitution Of India, 1950 — Article 14, 19
Control Order Of 2015 — Regulations 9

Citation : (2018) 11 J&K CK 0123

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : P. S. Ahmad, Asif Bhat

Judgement

1. Petitioner was granted dealership on commission basis to deal with the transactions regarding sale and storage of food grains and sugar under Public Distribution System to the consumers of Logripora area. This was done by respondent no.2 vide Order no.444-DCA&PD of 2003 dated 3rd November 2003. It is claimed that petitioner performed the job of dealership to the best satisfaction of respondent Department and beneficiary consumers, but respondent no.2, without any reason or provocation, transferred Fair Price Shop Dealership Licence of petitioner in favour of respondent no.7, vide Order no.164-DCAPDK of 2014 dated 5th March 2014. This was challenged by petitioner in OWP no.49/2014, which was disposed of by this Court on 26th November 2014 and order of transfer of licence in favour of respondent no.7, was quashed, and respondent no.2 was directed to reconsider the matter for continuation of licence in favour of petitioner or for grant of the same in favour of respondent no.7, in light of representation filed by both parties and pass fresh orders within a period of one months. In the order, it was also provided that till such decision was taken by respondent no.2, Fair Price Shop in question would be run departmentally. In compliance to the order of this Court, aforesaid, respondent no.1 has passed impugned order, i.e. Government Order no.33-CAPD of 2016 dated 1st March 2016, whereby respondent no.1 has accorded sanction to issuance of Fair Price

Shop Licence bearing CBC no.164 in favour of respondent no.7 and licence earlier issued in favour of petitioner has been cancelled. It is this order, petitioner is aggrieved of. The order impugned has been challenged primarily on the ground that direction to reconsider the matter was issued by this Court to respondent no.2 whereas order impugned has been passed by respondent no.1 and, therefore, the same is in violation of directions issued by this Court on 26th November 2014. Order impugned is also assailed on the ground that adequate opportunity of hearing was not afforded to petitioner before taking away his valuable right to run the shop under licence issued by respondent no.2.

2. Official respondents have filed their reply and the stand taken is that cancellation of licence issued in favour of petitioner was necessitated due to inability shown by petitioner to run Fair Price Shop due to his domestic engagements. It is stated that petitioner had not only executed an affidavit before the Chief Judicial Magistrate, Anantnag, wherein he has expressed his inability to run the affairs of Fair Price Shop due to personal problems, but had also submitted his No Objection Certificate for transfer of licence in favour of respondent no.7. It is further stated by respondents that after change of heart by petitioner and directions issued by this Court in OWP no.490/2014, the matter was reconsidered by respondent no.2. Petitioner as also respondent no.7 were summoned to appear in person and were given adequate opportunity to represent their case. Respondent no.2 even constituted a Committee to enquire into matter in depth and report after hearing both parties. The Committee also put both parties to notice and heard them on their respective stand. The Committee, constituted by respondent no.2, concluded that Fair Price Shop Licence, issued in favour of petitioner, deserves to be cancelled and also gave its recommendations for issuance of licence in favour of respondent no.7. It is, however, clarified that since licencing authority is respondent no.1 and no Fair Price Licence can be issued or cancelled without approval of respondent no.1 and, accordingly, respondent no.2 referred the matter to respondent no.1 for necessary approval and issuance of appropriate orders. It is in these circumstances, the respondents explain the reasons for issuance of impugned order by respondent no.1 instead of respondent no.2.

3. Having heard learned counsel for parties and perused the record, I am of the view that no fault can be found with order impugned, which is not only in consonance with principles of natural justice but is also in tune with directions issued by this Court on 21st November 2014 in OWP no.490/2014. It is not refuted by petitioner by placing any cogent documentary evidence on record that he had not submitted an affidavit duly executed before learned Chief Judicial Magistrate, Anantnag, expressing his inability to run Fair Price Shop due to his domestic engagements. Petitioner has also not denied that he had issued NOC in favour of respondent no.7 for transfer of licence in favour of latter. From the affidavit and NOC submitted by petitioner, it is explicit that he was not interested to run Fair Price Shop. That apart, even Local Panchayat had recommended candidature of respondent no.7 for transfer of dealership for convenience of

rationees of the area in the aforesaid facts and circumstances. Petitioner had expressed his inability to run the shop and people of the area represented by Local Panchayat had recommended respondent no.7 to be dealer. Respondents 1&2 had no option but to cancel licence, issued in favour of petitioner, and grant the same in favour of respondent no.7.

4. It may be noted that grant of licence of dealership of Fair Price Shop on commission basis is nothing short of conferring the State largesse in favour of citizens and in doing so, respondent State is expected to accord a fair, transparent and equitable treatment to all people similarly situated. It has been noticed that Fair Price Shop Licences are being issued by respondents without following any rationale, yardstick or criteria but on the basis of method which can only be termed as 'pick and choose'. Sometimes, licences are granted on the intervention of Panchayats and sometimes on the recommendations of local representatives, viz. MLAs/MLCs/MPs. Such processes are dehors the Constitutional provisions, particularly Article 14, which envisages right of equality to all. It would be in the fitness of things if respondents adopt fair and rationale criteria of selecting dealers for running Fair Price Shops and for that purpose invite all candidates who are eligible and desirous to run such shops by way of a public notice. Process of selection, in any case, should be in consonance with Article 14 and 19 of the Constitution of India. Having said that, and reverting to facts of the case, this Court is not inclined to interfere with order impugned and as a corollary, writ petition is found to be without any merit and is, accordingly, dismissed with connected IA(s). Interim direction, if any, shall stand vacated.

5. Before parting with the case in hand, it would be appropriate to mention here that grant of Licence for running Fair Price Shop is a source of employment to local youths having minimum qualification of matriculation. We have teeming millions in the country, who are unemployed and unable to make both ends meet. In such situation for distribution of State largesse and/or providing of employment, permanent or temporary, the government cannot act arbitrarily.

6. We already have a Statute, namely, National Food Security Act, 2013, promulgated by the Government of India and extended to the State of Jammu & Kashmir, which provides for food and nutritional security, in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity and the matters connected therewith or incidental thereto. Section 12 of the Act of 2013 specifically provides that the Central or State Government shall endeavour to progressively undertake necessary reforms in Targeted Public Distribution System in consonance with the role envisaged for them under the Act of 2013. Section 12, further provides that reforms shall, inter alia, include:

- i) Doorstep delivery of food grains to the Targeted Public Distribution System outlets;
- ii) Full transparency of records; and

iii) Preference to public institutions or public bodies like Panchayats, self-help groups, co-operatives, in licensing of fair price shops and management of fair price shops by women or their collectives.

7. The reforms indicated in Subsection (2) of Section 12 of the Act of 2013, are not exclusive but inclusive and, therefore, the States have been left free to devise targeted distribution system in consonance with objective of the Act and to provide quantity and quality food grains at affordable prices to targeted population. Similarly, the Central Government has issued Targeted Public Distribution System (Control) Order, 2015, in exercise of powers conferred by Section 3 of the Essential Commodities Act, 1955. The Control Order of 2015, as is apparent from its preamble, has been issued aiming at maintaining supplies and securing availability and distribution of essential commodity, namely, food grains under Targeted Public Distribution System envisaged under the Act of 2013. Regulation 9 of Control Order of 2015 deals with licensing and regulation of fair price shops, which is advantageous to be reproduced infra:

"9. Licensing and regulation of fair price shops. -

(1) The State Government shall issue an order under section 3 of the Act, but not inconsistent with this Order, for regulating the sale and distribution of the essential commodities.

(2) The license to the fair price shop owners shall be issued under the said order and the order issued by the State Government shall be notified and displayed on web portal.

(3) The designated authority appointed by the State Government shall issue the licenses to the fair price shop owners.

(4) The State Government shall accord preference to public institutions or public bodies such as panchayats, self help groups, cooperative societies in licensing of fair price shops and management of fair price shops by women or their collectives.

(5) The licences to the fair price shop owners shall be issued keeping in view the viability of the fair price shop.

(6) The State Government shall ensue that the number of ration card holders attached to a fair price shop are reasonable, the fair price shop is so located that the consumer or ration card holder does not have to face difficulty to reach the fair price shop and that proper coverage is ensured in hilly, desert, tribal and such other areas difficult to access.

(7) The State Government shall fix an amount as the fair price shop owner's margin, which shall be periodically reviewed for ensuring sustained viability of the fair price shop operations.

(8) The State Government shall put in place a mechanism to ensure the release of fair price shop owner's margin without any delay.

(9) The State Government shall allow sale of commodities other than the food grains distributed under the Targeted Public Distribution System at the fair price shop to improve the viability of the fair price shop operations."

8. What emerges from Regulation 9, aforesaid, is that the State Governments have been empowered to regulate sale and distribution of essential commodities including food grains. It, inter alia, provides that fair price shop owners would be properly licensed, which shall be notified and displayed. It further provides that the license to fair price shop owners would be issued keeping in view the viability of fair price shops and to ensure that number of ration card holders attached to a fair price shop are reasonable and the fair price shop is so located that consumer or ration card holder does not have to face any difficulty to reach the fair price shop. It also provides for fixation of amount as fair price shop owner's margin, which would be periodically reviewed for ensuring sustained viability of fair price shop operations.

9. Pursuant to aforesaid provisions contained in the Control Order, the J&K State Government, in supersession to all previous government orders/ circulars / instructions, issued a Government Order bearing No.127-FCS&CA of 2016 dated 04.08.2016, laying down revised norms/guidelines qua opening of Fair Price Shops on commission basis. The guidelines aforesaid are contained in Annexure to the aforesaid government order, paragraph-A whereof lays down parameters to be kept in mind while opening new Fair Price Shops. Paragraph B thereof relates to selection of salesman for running Fair Price Shop. For better appreciation and facility of reference, paragraph B of the Annexure to Government Order No.127-FCS&CA dated 04.08.2016 is reproduced hereunder:

"B) Selection of salesman for running Fair Price Shop:

(i) He/she should be permanent resident of J&K.

(ii) He/she should be local youth of the village/area.

(iii) He/she should have minimum qualification of matriculation and not more than 10+2. The qualification may be relaxed by Competent Authority, in case of deserving category/candidates.

(iv) He/she should furnish surety/Bank guarantee equal to cost of 3 months ration.

(v) No blood relation of employees of Department of Food, Civil Supplies and Consumer Affairs will be considered for grant of F.P.S. license.

(vi) Only one person in the family will be considered for grant of F.P.S. License.

(vii) Applicant for F.P.S. License should be unemployed, local educated youth between the age of 18 years to 37 years having good character certified by Gazetted Officer.

(viii) Residents of the village should pass resolution in favour of the F.P.S.

applicant.

(ix) F.P.S. applicant should have account in J&K Bank with cash balance equal to the cost of at least 3 months ration.

(x) That the applicant should have not been convicted of any heinous offence particularly any offence relating to Essential Commodities Act, or any other Act dealing with essential commodities."

10. From the perusal of paragraph B, it is apparent that an applicant, desirous of running Fair Price Shop, should be permanent resident of J&K State and should be local youth of the village/area, where Fair Price Shop is to be opened and operated. He should be an unemployed youth and should not have been convicted of any heinous offence. With a view to streamline the public distribution system and in supersession to Government Order no.352-FCS&CA of 2017 dated 24th August 2017 and in continuation to Government order no.127-FCS&CA of 2016 dated 4th August 2016 (supra), the J&K State Government through Department of Food, Civil Supplies and Consumer Affairs, issued a Government Order no.7-FCS&CA of 2018 dated 12th March 2018, laying down certain guidelines regarding opening of Fair Price Shops. In terms of aforesaid Government order dated 12th March 2018, Director, FCS&CA, in their respective divisions, have been asked to function as Licensing Authority for issuance of dealership licence of Fair Price Shop for distribution of ration among the rationees. However, the Licencing Authority, viz. Director, FCS&CA, has been directed to issue Fair Price Shop dealership on the recommendations of the Selection Committee, in which Joint Director, FCS&CA; Deputy Director, FCS&CA concerned; and Assistant Director, FSC&CA concerned, shall be members. It has also been enjoined in terms of aforesaid Government Order that Licensing Authority shall not issue Fair Price Shop dealership license, wherein the relaxation in age, qualification is required except with the prior approval of the Administrative Department in this behalf and no Fair Price Shop dealership License shall be issued unless the applications for said purpose are invited by Licensing Authority for sanction of Fair Price Shop location/area, after giving wide publicity to the same in the electronic/print media. If more than one applications are received, the order of preference of all eligible candidates, is to be endorsed by Selection Committee by adopting a rational criteria and taking into account the facts, such as the applicant is residing nearest to the location, having own space for storage of food grains, fulfilling all requisite conditions under Food Price Shop Policy notified vide Government Order no.127-FCS&CA of 2016 dated 4th August 2016. It also envisages that all licences obtained under any of previous relevant order, shall be re-examined/reviewed by Selection Committee in terms of law/ rules / orders / guidelines in vogue issued in this behalf from time to time within a period of fifteen days and in case any deficiency is found, the committee shall make its recommendations in this behalf and Director, FCS&CA shall be at liberty to take appropriate action by issuing a speaking order.

11. Thus, it is abundantly explicit from the above discourse that transparency is

bound to bring relief to all the stakeholders, prevent selective distribution of public largesse and make possible fair share of the benefits to everyone. It has been repeatedly held by the Supreme Court in the matters of granting largesse that the Government has to act fairly and without even any semblance of discrimination. Law on this subject has been very clearly laid down by the Supreme Court in the case of *Ramana Dayaram Shetty v. International Airport Authority of India and Others* reported in 1979 (3) SCC 489. A three-Judge Bench in the said decision has recognized that the Government, in a welfare State, is in a position of distributing largesse in a large measure and in doing so the Government cannot act at its pleasure. The Supreme Court perusing the new jurisprudential theory of Professor Reich in his Article on the "The New Property" (73 Yale Law Journal 733), accepted the following dictum contained therein:

"The government action be based on standards that are not arbitrary and unauthorized."

12. The Supreme Court explained the purport of the aforesaid formulation by holding:

"The government cannot be permitted to say that it will give jobs or enter into contracts or issue quotas or licenses only in favour of those having grey hair or belonging to a particular political party or professing a particular religious faith. The government is still the government when it acts in the matter of granting largesse and it cannot act arbitrarily. It does not stand in the same position as a private individual."

13. The aforesaid dictum in *Ramana* case (*supra*) is still followed by the Courts as correct exposition of law and has been subsequently followed in many other decisions. In *M/s Kasturi Lal Laskshmi Reddy v. State of Jammu & Kashmir* and another, 1980 (4) SCC 1, another three-Judge Bench of the Supreme Court relied on the dictum in the case of *Ramana* (*supra*) and held whenever any governmental action fails to satisfy the test of reasonableness and public interest, it is liable to be struck down as invalid. It also held that a necessary corollary of this proposition is that the Government cannot act in a manner which would benefit a private party. Such an action will be contrary to public interest.

14. Once a licence holder shows inability to run a Fair Price Shop, authorities are under obligation to put such licence for running Fair Price Shop to public by giving wide publicity in the electronic/print media, so that competent unemployed youth come forward with their desire to run Fair Price Shop. Running of Fair Price Shop is not a private affair but a public affair and interest. Fair Price Shop Licence, thus, cannot be, on asking of an individual, given or assigned to a particular person, without following the mandate of law. Any practice or action bestowing any public largesse upon any citizen, dehors guidelines, norms, rules and regulations, tantamount to arbitrariness and falls fall of Article 14. Given the above discourse, the J&K State Government is expected to come up with sturdy

guidelines, norms and regulations for grant of Fair Price Shops Licences in consonance with and compliant with mandate of Article 14 of the Constitution of India, so as to checkmate and arrest the practice and actions, dehors Constitutional mandate.

15. Registry to send copy of this order to Chief Secretary, J&K State and Commissioner/Secretary to Government, Food, Civil Supplies and Consumer Affairs Department.