(1988) 02 KL CK 0035

In the High Court Of Kerala

Case No : Writ Appeal No. 21 of 1988

N. Divakaran APPELLANT

Vs

Taluk Supply Officer, Quilandy and Others RESPONDENT

Date of Decision : 02-02-1988

Acts Referred:

Essential Commodities Act, 1955 — Section 3
Kerala Rationing Order, 1966 — Rule 45, 45(11), 71

Citation : AIR 1988 Ker 288 : (1988) 1 ILR (Ker) 556

Hon'ble Judges : V.S. Malimath, C.J;V. Bhaskaran Nambiar, J

Bench : Division Bench

Advocate : Mathew Zachariah, Kozhy George and C.C. Thomas, for the Appellant;

Final Decision : Dismissed

Judgement

Malimath, C.J.—The appellant-petitioner was absent before the learned single Judge. The learned single Judge, however, looked into the case and felt that there is no ground to interfere with the order of the State Government made in exercise of its revisional power in modifying the punishment imposed on the 6th respondent having regard to the fact that he has been running the shop for a long period without any punishment and that the lapse now proved is not of a serious character. The learned single Judge therefore declined to interfere.

2. What is contended by the appellant in this appeal is that the order having been made in exercise of the revisional jurisdiction by the Commissioner under Rule 45(11) of the Kerala Rationing Order, 1966, the State Government could not have interfered with that order in exercise of its revisional powers. Reliance was placed in support of this contention on the decision of a learned single Judge of this Court reported in 1975 KLT 639 between Chandravally v. State of Kerala decided on 1st July, 1975. It has been laid down in the said decision as follows :

"Under Clause 45(11) both the State Government and the Commissioner of Civil Supplies have got revisional powers. No revision will lie from an order in appeal under Clause 45(10)(i) while a revision will lie from an order in appeal under Clause 45(10)(ii) because the appellate authority there is an authority subordinate to the State Government. A revision will lie from an order passed in appeal under Clause 45(10)(iii) to the Commissioner of Civil Supplies because the authorities mentioned in the notification dated 1st July 1966 are subordinate to the Commissioner of Civil Supplies. A revision can lie to the State Government also. But there is only one and only one revision. Hence in a case like this where the Commissioner of Civil Supplies has exercised the revisional powers under Clause 45(11), there is no further revision to the State Government. Moreover, it will be a revision of an order in revision under Clause 45(11). This is not contemplated by Clause 45(11) of the Kerala Rationing Order."

Thus, it was pointed out in the said decision that once the Commissioner exercised power of revision under Rule 45(11), the State Government which is also conferred with the revisional power by the very same provision, cannot exercise its powers of revision. It has been so held because the source of power is the same and no superior power of revision has been conferred on the State Government. But, it has to be pointed out that after the said decision was rendered on 1-7-1975 the Kerala Rationing Order, 1966 has been amended and Rule 71 was inserted by Kerala Gazette Extraordinary No. 634 dt. 29-10-1975, which reads:

"71. The Government, may call for and examine the records of any order passed by the Commissioner or any other subordinate authority under the provisions of this Order for the purpose of satisfying themselves as to the legality or to the propriety of such order and may pass such orders in reference thereto as the Government may deem fit."

It is clear from this provision that if an authority subordinate to the State Government like the Commissioner has exercised his revisional powers under Rule 45(11) of the Kerala Rationing Order, the exercise of such power by an authority subordinate to the Government is subject to further revision by the State Government, which has been conferred with such power expressly by Rule 71. Hence after Rule 71 came into force it is obvious that the State Government can exercise the final revisional power and revise an order made by the Commissioner or any authority subordinate to it, made under any of the provisions of the Kerala Rationing Order, as the State Government has been conferred with a superior power of revision under Rule 71. Hence after Rule 71 of the Kerala Rationing Order came into force, it cannot be said that the State Government cannot exercise its revisional power, such superior power having been expressly conferred by Rule 71. Hence this appeal fails and is dismissed.

