
(1998) 12 KL CK 0005
In the High Court Of Kerala
Case No : W.A. No. 2340 of 1998

N. Sarojini

APPELLANT

Vs

Dist. Collector and Others

RESPONDENT

Date of Decision : 17-12-1998

Acts Referred:

Citation : AIR 1999 Ker 119

Hon'ble Judges : K. Narayana Kurup, J;A.R. Lakshmanan, J

Bench : Division Bench

Advocate : M.K. Chandramohan Das, K.K. Raziya and C.S. Manilal, for the Appellant; Alexander Thomas, Government Advocate, for the Respondent

Judgement

K. Narayana Kurup, J.—The Petitioner in the Original Petitions is the Appellant in both these writ appeals. The writ appeals are directed against the common judgment of the learned single Judge in O.P. 6194 and 10181 of 1998 dismissing the Original Petitions upholding the impugned orders therein. The brief facts of the case are as follows:

2. The Appellant-Petitioner is the licensee of a Wholesale Ration Shop viz; A.W.D. (Authorised Wholesale Depot) No. 16 of Nedumangad Taluk. On receipt of a complaint, the Controller of Rationing, Board of Revenue (CS), Trivandrum inspected the Appellant 's shop on 1-11-1997 and detected shortage of 241.89 quintals of Fine Boiled Rice and four other irregularities. The Controller suspended the authorisation of A.W.D. as per proceedings No. CS-A5-46146/97 dated 1-11-1997. The case was thereafter referred to the District Collector, Trivandrum who in exercise of the powers conferred under Clause 51(8) of the Kerala Rationing Order passed Ext. P2 order in O.P. No. 6194 of 1998-K finding that there was shortage and that the cost of rice found short as reported by the Controller of Rationing will be recovered from the Appellant and the entire security deposit to be forfeited to the Government. The challenge in writ appeal No. 2341 of 1998 is against the aforesaid Ext. P2 order of the District Collector.

3. Writ appeal No. 2340 of 1998 is directed against the judgment of the learned single Judge in O.P. 10181/1998 dismissing the same upholding Exts. P6 and P7 orders therein whereby the 3rd Respondent viz; the Taluk Supply Officer, Nedumangad, Trivandrum had forfeited the value of 237 quintals of Fine Boiled Rice.

4. We heard counsel on both sides.

5. The specific case set up by the Department is that at the time of inspection, there was a shortage of 241.89, quintals of Fine Boiled Rice in the stock held by the Appellant-Petitioner. However, we are of the opinion that the said shortage has not been fully established following the existing instructions laid down in the Civil Supplies Mannual. Even in Ext. P2 order passed by the District Collector, it is admitted that "both in terms of weighment and preparation of mahazar, the Controller of Rationing had not complied with the existing instructions laid down in the Civil Supplies Mannual". The mahazar has been prepared based on average weight and it is on that basis the shortage has been found to the tune of 241.89 quintals of fine Boiled Rice in the Stock. Admittedly the Controller of Rationing has not caused a proper inspection of the depot by verifying the stock kept in the depot and has not ascertained the stock by physical measurement. In this connection, it has to be noted that on suspension of licence the stock was transferred to another wholesale dealer who reported that there is an excess of 237 quintals of the stock transferred to him instead of shortages as noticed at the time of inspection. If that is the position, the allegation that there is deficiency of 241 quintals of rice cannot be taken as correct and the shortage can only be of 4.89 quintals. According to the Appellant-Petitioner, there is no deficiency of stock even to the extent of the aforesaid 4.89 quintals. Admittedly, the Controller has not physically weighed the entire stock in which case, we are of the view that the Appellant-Petitioner cannot be made responsible for the irregularities noted against him. The District Collector having noted the aforesaid irregularities in verification of stock was not correct in issuing Ext. P2 on the ground that at the time of inspection, the dealer has not registered her protest. The fact that the Appellant-Petitioner has not registered her protest is not sufficient to enter an adverse finding, resulting in civil consequence to the dealer. The Department in such a case should support its case by valid materials gathered at the time of inspection and is not expected to take any mileage out of the so-called non-registering of any protest by the Appellant-Petitioner which is of no consequence in the face of the failure on the part of the Controller of Rationing to comply with the existing instructions laid down in the civil supplies Mannual in the matter of weighment and preparation of mahazar. When the Mannual prescribes a particular method, that method has to be scrupulously followed in pain of invalidation of the order for breach thereof. He who takes the procedural sword shall perish with it is a hackneyed principle universally recognised. It is settled that a decision which is illegal, irrational and unfair cannot be legally sustained. Viewed in the above backdrop the decision of the District Collector evidenced by Ext. P2 in O.P. No. 6194 of 1998 as also Exts. P6

and P7 in O.P. 10181 of 1998 cannot be legally sustained. Accordingly, we are of the view that the entire matter requires a fresh look at the hands of the District Collector, Trivandrum. We, therefore, set aside the judgment of the learned single Judge and Ext. P2 in O.P. No. 6194 of 1998 as also Exts. P6 and P7 in O.P. No. 10181 of 1998 and as a sequel there will be a direction to the District Collector, Trivandrum to pass fresh orders after affording an opportunity of being heard to the Appellant-Petitioner either in person or through counsel within four weeks from today in conformity with the observations contained in this judgment.

The Writ Appeals are disposed of as above.