
(1983) 07 KL CK 0015

In the High Court Of Kerala

Case No : O.P. No's. 7395 and 8129 of 1982

P.K. Ahmed

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 13-07-1983

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 32

Citation : (1983) KLJ 516

Hon'ble Judges : K.S. Paripoornan, J

Bench : Single Bench

Advocate : P.V. Ayyappan and P.V. Chandramohanan, for the Appellant;

Final Decision : Allowed

Judgement

K.S. Paripoornan, J.—The petitioner is a licensee under the Rationing Order 1966, of A.R.D. 57 Ambalaparamba in Perinthalmanna Taluk from 1979. Some irregularities were detected in the, petitioner's depot. This led to the suspension of the authorization issued to the petitioner to run the authorized ration depot (ARD). The stock found in the petitioner's shop was handed over to the 5th respondent in the O.P. who is conducting A.R.D 127, as a temporary measure. Finally by Ext P3 order dated 20-9-1982 the Taluk Supply Officer, Perinthalmanna informed the petitioner that the District Supply Officer, Vigilance, Palghat by order dated 15-9-1982 has ordered to forfeit the amount of Rs. 250/- from the security deposit and to recover the cost of 4.75 kilo grams of sugar and 22 litres of Kerosene oil from the petitioner It was also mentioned that the said order has directed the re-entrustment of the shop to the petitioner after remittance of the above amount Ex. P4 shows that the amount ordered was deposited by the petitioner, It is alleged that the Rationing Inspector, Mankada came to the spot on 29-9-82, but due to the resistance of the 5th respondent the charge of A.R.D. No. 57 could not be given to the petitioner. The petitioner filed an application before the 2nd respondent, District Collector, Malappuram, requesting him to take effective steps against the 5th respondent and to compel him to hand over

charge No. 57 to the petitioner. (Vide Ext. P6.) Alleging that the District Collector, Malappuram, the District Supply Officer, Malappuram, and the Taluk Supply Officer, Perinthalmanna - respondents 2,3 and 4-did not take proper steps to re-entrust the shop to the petitioner, O.P. 7395 of 1982 was filed praying that respondents 2 to 4 may be directed to implement Ext. P3 order and for other reliefs. In the said O.P. the 4th respondent, Taluk Supply Officer, filed a detailed counter-affidavit dated 18th October, 1982. It is stated in the said counter-affidavit that on 21-9-1982 when the 4th respondent visited the spot to ascertain the situation, a good number of card holders, formerly attached to A.R.D. No. 57 and temporarily attached to A.R.D. No. 127, raised serious objections regarding the owner of A.R.D. No. 57 (petitioner) and also against the re-transfer of the cards to the owner of A.R.D. No. 57 (the petitioner). The matter seems to have been reported to the District Supply Officer, Malappuram. It is definitely averred by the 4th respondent that he received a message on 23rd September 1982 from the Controller of Rationing, Trivandrum informing that the Controller of Rationing had received a mass petition from the former card holders of A.R.D. No. 57 and till further orders, the order of the District Supply Officer dated 15-9-1982 mentioned in Ext. P3 whereby re-entrustment of the shop was ordered to the petitioner may be kept in abeyance. It is also stated that on 15-10-1982 another message was received by the deponent of the affidavit, from the Controller of Rationing stating that the complaint petitions received from the card holders were treated as an appeal, by the Controller of Rationing against the orders of the District Supply Officer (Vigilance) and so further action may be kept in abeyance. In the light of the averments in the counter affidavit, the petitioner filed O.P. No. 8629 of 1982 and prayed for quashing Ext. P4, the said teleprinter message No. CS/A5/46903/82 dated 23-9-1982 sent by the Controller of Rationing (2nd respondent) to the District Supply Officer stating that the orders of the District Supply Officer dated 15-9-1982 may "be kept in abeyance as stayed till disposal of the complaint petitions received from card holders which is actually an appeal against the above", According to the petitioner Ext P.4 communication is totally unauthorized, illegal and without jurisdiction and respondents 2 to 4 are bound to implement the order of the District Supply Officer, Palghat dated 15-9-1982 mentioned in Ext. P3 which has become final. The petitioner also stated that the shop should have been re-entrusted to him in implementation of Ext. P3 long ago. It is common ground that respondents 1 to 4 are bound to implement the order of the District Supply Officer (Vigilance) Palghat dated 15-9-1982 and re-entrust the shop, A.R.D. No. 57, to the petitioner. But according to the Government Pleader re-entrustment mentioned in Ext. P3 was stayed by the Controller of Rationing, the second respondent in O.P. No. 8629 of 1982 as per Ext. P4 in that case. Counsel contends that till the disposal of the complaint petition received from the card holders (which was treated as an appeal) it is only fair and proper that the order of the District Supply Officer (Vigilance) dated 15-9-1982 is kept in abeyance. Counsel for the 5th respondent in O.P. 7395 of 1982 supported the learned Government Pleader and further contended that the Controller of Rationing was justified in treating

the complaint received from card holders as an appeal from the order of District Supply Officer dated 15-9-1982. It is common ground that Ext. P3 order or the order of the District Supply Officer, Palghat dated 15-9-1982 were not taken in appeal by the petitioner. No revision was taken suo motu impugning the order of the District Supply Officer (Vigilance) Palghat dated 15-9-1982. Counsel for the 5th respondent in O.P. No. 7395 of 1982 contended that there is no legal bar in treating the complaint-petition of the card holders as an appeal, by the Controller of Rationing, acting u/s 51 (10) of the Rationing Order. Nay, the Controller was justified in "suo motu" treating the complaint received as an appeal u/s 51(10) of the Rationing Order and in passing the stay order and reliance was placed by counsel on what is now known as "People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, in support of his submissions;

2. It will be relevant at this stage to quote Clause 51 sub clauses (8) and (10) of the Kerala Rationing Order, 1966:

(8) If the District Collector or any Officer of the Civil Supplies Department not below the rank of a Taluk Supply Officer finds that the authorized wholesale distributor has contravened any of the provisions of this Order or any of the directions issued thereunder or on receipt of a report from any of the officers referred to in sub-clause (7) or on his own inspection of the stocks and accounts in a shop finds any shortage or excess in the quantity of rationed articles in the stock, or any irregularities in the accounts, or detects non-compliance with any of the directions issued by competent authorities or contravenes the provisions of any order issued by a competent authority u/s 3 of the Essential Commodities Act (Central Act 10 of 1955) which is for the time being enforced he may after giving the authorized wholesale distributor an opportunity of stating his case and for reasons to be recorded in writing amend, vary, suspend or cancel his appointment and/or order forfeiture of the whole or any part of the amount deposited by the authorized. wholesale distributor as security under sub-clause (5). Notwithstanding anything contained in this sub-clause he may order the realization of an amount equivalent in value to the cost of the quantity of rationed articles found to be short or in excess (and the cost of any quantity of rationed articles misappropriated by falsification of accounts) (and all sums collected in. excess by way of transport charges, handling charges, profit etc., and gained by the authorized wholesale distributor due to incorrect fixation of price or any other defect in calculation when the mistake is subsequently detected) at the time of inspection. If considered necessary he may suspend the appointment of the wholesale distributor temporarily pending enquiry.)"

(10. Any person aggrieved by any order passed under this clause may within thirty days from the date of service of such order appeal.

(1) In the case of an order passed by the Commissioner to the Government.

(2) In the case of an order passed by the District Collector to the Commissioner.

(3) In the case of an order passed by any other officer to such authority as the

Government may specify in this behalf.

and the decision of the Government, Commissioner or such authority shall subject to the provisions of sub-clause (It) be final)."

It will be useful to notice S.R.O. No. 419/80 dated 29-2-1980, whereby the Controller of Rationing is designed as the competent authority to entertain and dispose of. appeals from the original orders of the District Supply Officer (Vigilance).

Appellate Authorities under Cl. 51(10)

No. 6980|B1|79-4|Food.

Dated, Trivandrum, 29th February 1980.

Published in K. G, No. 18 dt. 29-4-1980

S.R.O. No. 419/80-In exercise of the powers conferred by paragraph (iii) of sub-clause (10) of clause 51 of the Kerala Rationing Order, 1966 and in supersession of Notification No. 89I5|Fd. BI/66-33|Fd. D dated the 1st July 1966, the Government of Kerala hereby specify the authorities mentioned in column (1) of the Schedule below to entertain and dispose of appeals from the original orders passed by the Officers specified against each of them in column (2) thereof:

SCHEDULE

(1)

(2)

1.

Director of Civil Supplies

Controller of Rationing

2.

District Collector

District Supply Officer

3.

Controller of Rationing

District Supply Officer (Vigilance)

4.

District Supply Officer

1. Taluk Supply Officer.

2. City Rationing Officer

3. The petitioner, owner of A.R.D. No. 57, is a person, no doubt, aggrieved by the order of the District Supply Officer (Vigilance) dated 15-9-1982 and referred to in Ext. P3. He has not filed an appeal. Nor has the revisional authority exercised the powers vested in it suo motu in this case. The sole question is: can be card holders be considered to be persons aggrieved by the order of the District Supply Officer (Vigilance) Palghat dated 15-9-1982? It should be remembered that there should be a specific or express provision conferring the right of appeal on any person. A reading of Clause 51(10) along with other sub clauses therein leaves no room for doubt that the persons who filed the complaints in the instance case, (the card holders) cannot be considered to be persons "aggrieved" by the order of the District Supply Officer (Vigilance) Palghat dated 15-9-1982 or by order Ext. P3 passed by the 4th respondent. It follows that the attempt of the 2nd respondent in O.P. No. 8629 of 1982 to treat the complaints received from the card holders as an appeal against the order of the District Supply Officer (Vigilance) dated 15-9-1982 is unjustified and unwarranted. Clause 51(10) of the Rationing Order does not provide for an appeal at the instance of the card holders. In the light of the above, can a complaint petition filed by the card holder be treated as an appeal by the 2nd respondent, the Controller of Rationing? It is trite law that what cannot be done directly, cannot be achieved indirectly. If so, the Controller of Rationing cannot treat the complaint of the Card holders as an appeal. He had no jurisdiction or authority to do so. The Controller of Rationing is only an authority functioning under the statute and his jurisdiction and powers should be as provided or envisaged by the statute. It is settled law that "it is the duty of persons upon whom statutory powers are conferred to keep strictly within those powers". (Vide Halsbury's Laws of England, Third Edn. Vol. 30, para 1324 p. 686). No appeal is provided at the instance of the card holders from either Ext. P3 order or the order of the District Supply Officer (Vigilance) dated 15-9-1982. Similar contention as to whether an appeal will lie at the instance of card holders in cases where re-entrustment of the shop was ordered to a dealer, came up for consideration in O.P. No. 348 of 1981. Justice Sri. V. Khalid took the view that a complaint petition, as one in the instant case, cannot be treated as an appeal under clause 51(10). In Write Appeal No. 61 of 1982 dated 5-2-1982 the Division Bench held:

No doubt any person aggrieved by Ext A1 could have filed an appeal. Ext. P8 was treated as an order on an appeal filed by a number of persons one of whom is the 4th respondent in the Original Petition who is said to be a ration card holder drawing ration, from the petitioner's shop. Ext. P3 representation filed by these persons cannot be an appeal under the Kerala Rationing Order as it cannot be an appeal under the Kerala Rationing Order as it cannot be said that the 4th respondent or the signatories are aggrieved by Ext. P1 order. It is the petitioner who is aggrieved by the order as a punishment has been imposed against him. Therefore in treating it as an appeal and enhancing the punishment by Ext. P8 order the 3rd respondent did not act in accordance with the Kerala Rationing Order.

In the light of the above decisions, of this court, the communication of the Controller of Rationing, Board of Revenue, Trivandrum, evidenced by Ext. P4 in O.P. No. 8629 of 1982 is unauthorized and totally wanting in jurisdiction. It deserves to be quashed. I hereby do so. As a consequence it follows that the failure of respondents 2 to 4 in O.P. 7395 of 1982 in not implementing the order of, the District Supply Officer (Vigilance) dated 15-9-1982 evident from Ext. P3 and failing to re-entrust the shop A.R.D. 57 to the petitioner is a failure to discharge the duty imposed on them by law. I hereby direct respondents 2 to 4 to implement the order of the District Supply Officer (Vigilance) Palghat dated 15-9-1982 and hand over A.R.D. No. 57 shop to the petitioner, the authorized dealer.

Before closing, I should dispose of a contention raised by the counsel for the 5th respondent, who is conducting A.R.D. No. 127 and to whom charge of A.R.D. 57 was given temporarily. Mr. Rajagopal counsel, argued that the Controller of Rationing was justified in treating the complaint petition filed by the card holders as an appeal under clause 51(10) of the Rationing Order. I have found that no appeal will lie at the instance of the card holders under clause 51(10) of the Rationing Order. If no appeal will lie at the instance of card holders, the complaint petition sent by them cannot be treated as an appeal by the Controller of Rationing. Reliance was placed by counsel on the ratio of the decision by the Supreme in *People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others*, , for contending that the Controller of Rationing could treat the complaint as an appeal. This argument is ill-conceived. In my opinion, the Controller of Rationing has arrogated to himself a jurisdiction not vested in him under law. It should be remembered that the powers exercised by the Supreme Court and the High Courts in adjudicating, what is now familiarly known as "public interest litigation" treating letters or complaints as petitions filed in court, is so done in exercise of the powers vested in such courts to issue prerogative writs and/or order or direction under Article 32 and 226 of the Constitution of India. Such powers are very wide in content and import.

1958 In *S. Barrow v. State of U.P.* (AIR. All. 154 at p. 158) a Bench of the Allahabad High Court observed: ,

Art. 226 of the Constitution does not confine the powers of Courts to issuing prerogative writs in cases where a party makes an application for the purpose and we think the words are wide enough to authorize the High Court to quash an order suo motu. In any case, we think we have power under Art. 227 of the Constitution to set aside that order.

Another Bench of the Allahabad High Court in the decision reported in *Smt. Abida Begam and Others Vs. Rent Control and Eviction Officer, Lucknow and Another*, held:

We think that this Court has a jurisdiction under Art. 226 of the Constitution to grant the relief..... even though this matter had not come in its writ jurisdiction

on an application under Art. 226.

It is settled law that the powers vested in the High Courts under Article 227 of the Constitution can be exercised suo motu. Thus in exercise of the powers under Article 226 and/or Article 227 of the Constitution the Court is enabled to issue prerogative writs or other orders or directions and to remedy injustice when it is brought to its notice. It should be remembered that the jurisdiction so vested and the powers exercised by the Supreme Court and High Courts, flows from the Constitution, which is the paramount law of the Nation unlike the powers vested in Statutory Authorities like the Controller of Rationing, under a particular Statute or statutory order. The jurisdiction or powers of the statutory authorities, which are creatures of particular statutes, should be only as enshrined within the frame work and express provision specified in the respective statutes. Their powers are limited and they cannot claim any prerogative jurisdiction or powers. It is surprising that the Controller of Rationing who is only a statutory authority has arrogated to himself a power not vested in him under law and the plea is put forward that it could be so done, by placing reliance on the Supreme Court decision in People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, . The following observations of Bhagwati, J. in S. P. Gupta and others v President of India and others (AIR 1982 S.C. 749 at p. 188) which was cited with approval in People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, are pertinent in this connection:

17. It may therefore now be taken as well established that where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Art. 226 and in case of breach of any fundamental right of such person or determinate class of persons, in this Court under Art. 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons. Where the weaker sections of the community, are concerned, such as under-trial prisoners languishing in jails without a trial inmates of the Protective Home in Agra or Harijan workers engaged in road construction in the Ajmer District, who are living in poverty and destitution, who are barely eking out a miserable existence with their sweat and toil, who are helpless victims; of an exploitative society and who do not have easy access to justice, this Court will not insist on a regular writ petition to be filed by the public spirited individual espousing their cause and seeking relief for them. This Court will readily respond even to a letter addressed by such individual acting pro bono publico. It is true that there are rules made by this Court prescribing the procedure for moving this Court for relief under Art. 32 and they require various formalities to be gone through by a

person seeking to approach this Court. But it must not be forgotten that procedure is but a hand-maiden of justice and the cause of justice can never be allowed to be thwarted by any procedural technicalities. The Court would therefore unhesitatingly and without the slightest qualms of conscience cast aside the technical rules of procedure in the exercise of its dispensing power and treat the letter of the public minded individual as a writ petition and act upon it.

It is evident that the Controller of Rationing acted wholly without jurisdiction in treating the complaint-petition as an "appeal", as mentioned in Ext. P4 tele-printer message in O.P. No. 86291/82, and this is due to a total misconception of his jurisdiction. In the circumstances I declare Ext. P4 in O.P. No. 8629 of 1982 as illegal, void and without jurisdiction and further direct respondents 2 to 4 in O.P. No. 7395 of 1982 to implement the order of the District Supply Officer (Vigilance) Palghat PV-1113/82/CS dated 15-9-1982 and re-entrust the shop ARD No. 57 to the petitioner forthwith. (The order of D. S. O. (Vigilance) Palghat is Ref. No. 2 in Ext. P3 in O.P. No. 7395 of 1982).

In the result, the Original Petitions are allowed with costs including Advocate's fees of Rs. 500/- in each Original Petition.