
(2001) 08 KAR CK 0013

In the Karnataka High Court

Case No : Writ Petition No"s. 19821-30 of 2001

Puttamma and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 31-08-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2002 Kar 169 : (2001) 4 KCCR 445 SN

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : G. Kiran and H.G. Shivananda, for the Appellant; Shobha Patil, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

1. Petitioners in all these cases are hawkers operating in the State of Karnataka. Petitioners in these petitions are seeking for a direction to increase the present commission from 0.30 ps. to Re. 1/- per litre in addition to allotment of 500 ration cards. They also seek for a writ of certiorari for quashing the order No. INR.DRA(S)148;2000-01 dt. 24-4-01 and consequent memorandum dt. 30-4-2001 on the following facts.

2. Petitioners state that they are holding a retail license for distribution of kerosene in the rationing area of metropolitan city of Bangalore and they have been provided licenses under the Karnataka Essential Commodities Licensing Order. 1986 and they are also allotted licenses for distribution under the public distribution system to ration card holders. The distribution of essential commodities are regulated in terms of public distribution system. The State Government has passed an order known as Karnataka Essential Commodities (Public Distribution System) Control Order, 1992 in the matter of regulation of essential commodities including kerosene, rice, sugar, wheat, edible oil etc. The said order provides, for grant of authorisation by the authorised authority and also provides for obtaining an authorisation to run a fair price shop in terms of

the system. The hawkers in terms of these provisions are to distribute kerosene to ration card holders residing in a specified area. Petitioners are licensed retailers and are selling kerosene in their respective shops in terms of their licenses. They subsequently were selling kerosene to card holders by way of push carts in terms of directions of Food and Civil Supply department. The wholesale dealer used to provide kerosene by way of quota system. Now the respondents have issued an order dt. 24-4-01 and subsequent order dt. 30-4-01 stating therein that in the absence of their having a shop for selling kerosene the cards issued to them would be withdrawn. Petitioners aggrieved by these orders are before this Court in these petitions seeking for a direction not to enforce the order dt. 24-4-01 and 30-4-01. In other connected petitions they have sought for a direction for increase in commission and also for an increase in number of cards.

3- Petitioners essential contention is that there is a policy change resulting in practical difficulties to the petitioners. Petitioners complain about their economic condition and say that the commission offered per liter as on today is 0.30 Ps. which they want to be increased to Re. 1/- in these petitions.

4. The learned counsel for the parties are heard.

5. In other connected matters the facts and grounds are same or similar; prayers are also same as in this case. In the city of Gulbarga they also say that the Deputy Commissioner has made recommendation in the matter of providing shops and sites. Since the facts are common in all these petitions are heard by me.

6. Counsel reiterate their facts and grounds before me by way of arguments, and in addition they say that this Court on an earlier occasion had provided certain relief in the matter. They say that this Court on an earlier occasion had provided certain relief in the matter. They also say that the impugned orders are not to be enforced against them. They further seek increase in the matter of commission.

7. The respondents have entered appearance. They have also filed a detailed statement of objections. Respondents state that all the petitioners are holders of hawkers licenses issued in terms of Karnataka Essential Commodities Licensing Order, 1986. Earlier kerosene used to be sold to card holders by way of push/ bullock carts. In the light of the various complaints in the matter of distribution of kerosene by these hawkers and with a view to streamline the procedure the Government thought it fit to trace out the hawkers from the public distribution system. A circular came to be issued on 31-5-99 providing for six months time to acquire suitable premises. Respondents further say that the PDS Control Order provides for sale of kerosene to carry holders only through a fair price shop. They also say that earlier these hawkers were permitted to continue distribution purely on an ad hoc or temporary measure. The circular dt-31-5-99 was challenged by writ petitions and this Court dismissed the same with certain observations. They further justify the impugned order.

8. Admitted facts reveal that the petitioners-hawkers have a license in terms of the Karnataka Essential Commodities Act of 1986. Now kerosene is Supplied through PDS scheme to the ration card holders. The PDS order requires a shop with regard to distribution of kerosene. The sale of kerosene to card holders definitely provides an advantage of fixed income on account of assured card holders. This very matter is considered by this Court in more than one case. This Court in the case of Vyavasaya Seva Sahakara Nema Co-operative Society v. State of Karnataka. reported in ILR 1997 Kar 640 has noticed this very order. This Court noticing the Karnataka Essential Commodities Orders 1986 and also Karnataka Essential Commodities (Public Distribution System) Control Order. 1992 ruled in para 9 as under :

"It further transpires that the Central Government being committed to open market economy in deviation to its earlier policy, appears to have decided to provide for a liberal marketing system for sale and distribution of kerosene oil. Accordingly, it has come out with an order called "The Kerosene (Restriction on use and fixation of price) Order 1966 which has come into force from 18-3-66. According to this order, kerosene oil meant for marketing and selling at declared prices through public distribution system as envisaged by the State Governments has to be effected only through fair price depots."

9. Subsequently in a subsequent judgment in the case of Mysore City Etc. Kerosene Hawkers Sangha Vs. State, , this Court ruled in para 4 reading as under :

"4. It may be relevant to notice here that the State Government for enforcing the public distribution system in a more effective manner has made "The Karnataka Essential Commodities (Public Distribution System) Control Order 1992". which has come into force with effect from 7-1-93 i.e. the date of its publication in the Official Gazette. Under the provisions of this order the essential commodities including kerosene oil can be sold to the card holders only through a Fair price Depot as defined under Clause 2(f) of the Order. This order does not authorise the distribution of kerosene oil through the hawker's as defined under Clause 4(2) of the 1986 Licensing order. Under the PDS Control Order, a fair price depot has to be in a defined premises. In the case of Vyavasaya Seva Sahakara Nema Co-operative Society v. State of Karnataka, I have considered in detail the respective provisions of the Essential Commodities Act and the Orders made by the Central Government and State Government under Sec. 3 thereon regulating the supply of kerosene oil through public distribution system."

10. This Court has categorically ruled in para 6 in the said judgment that the hawkers cannot be permitted to supply kerosene oil under the public distribution system to the card holders under the hawker's license granted under the 1986 Licensing Order.

11. As mentioned earlier the State Government had issued an order dt. 31-5-99 directing discontinuation of distribution of kerosene under the Public distribution

system through hawkers operating with carts and kerosene shall be distributed under public distribution system only through regular/permanent shops. The said order as I mentioned earlier was challenged in this Court and this Court in the case of Karabasappa and Others Vs. State of Karnataka and Others, upheld the order dt. 31-5-99 in para 10 ruling as under :

"The aforesaid three decisions make it clear that holding of a licence under the Licensing Order will not enable the holder of such license to distribute essential commodities to ration card holders under the PDS Control Order. A Hawker's license is contemplated only under the Licensing Order and not under the PDS Control Order. Under the PDS Control Order, a fair price depot has to be run by a person holding the authorisation issued by the authorised authority. Under the PDS Control Order, an authorisation to run a fair price depot can be issued only to a person who possesses a suitable business premises. As PDS Control Order does not contemplate sale of kerosene under the public distribution system through hawkers in push carts, the order dt. 31-5-99 discontinuing the system of supply of kerosene to ration card holders under the public distribution system through hawkers, does not suffer from any infirmity. In fact, it merely gives effect to the provision of the PDS Control Order and the aforesaid decisions of this Court and is not therefore open to challenge. The challenge to consequential orders directing stoppage of distribution of kerosene to ration card holders under public distribution system, through hawkers from 1-1-2000 is also not open to challenge. The petitions, therefore, will have to fail, insofar as persons who are holding hawkers licenses only."

12. This Court however made certain suggestions in paras 11 and 12 also.

13. In the light of these judgments of this Court the respondents have increased the commission up to Rs. 300/- up to 1000 liters. Government has also ordered to accord priority to all those hawkers who convert themselves into retailers in the allotment of excess cards as and when available. In the light of the pronouncements of this Court in the above referred three cases it cannot be said that the respondents have committed any legal error requiring my interference. This Court in unmistakable terms ruled that the 1986 hawkers licenses cannot be valid in the case of Mysore City Etc. Kerosene Hawkers Sangha Vs. State,

14. The subsequent notification providing for discontinuance of push carts is upheld in a subsequent judgment. This Court in the earlier batch of cases noticed the difficulties and taking into consideration the difficulties of the hawkers the respondents have increased the commission rate now also. The petitioners however seek for enhancement from 0.30 Ps. to Re. 1/- in the case on hand. I am afraid that such a relief cannot be granted in these cases. Firstly there are no materials available on record to justify this increase from 0.30 Ps. to Re. 1/- as contended by them. Even otherwise this Court under Article 226 of the Constitution of India cannot consider grant of said increase which is purely commercial matter affecting the economy of the State. It is for the authorities to workout the proper payment of commission on the basis of several factors in the

matter of distribution of kerosene. It cannot be forgotten that kerosene is mostly opted by economically and socially weaker section of the society. Any increase in the commission would tell upon the price of kerosene which is used by poor people. This Court has to weigh the scale between the hawkers and the consumers. Taking into consideration all the above facts I am clearly of the view that no case is made out for an abnormal increase to Rs. 1/- from Ps. 30/- by the petitioners and also in the absence of any violation of any regulations this Court in a writ petition cannot fix a rate of commission to these petitioners. Therefore this prayer has to be rejected and I do so in the case on hand.

15. Insofar as increase in cards are concerned it is for the authority to decide the same, petitioners cannot as a matter of right demand the quantity of cards in these petitions. Their complaint of insistence of shop for distribution of kerosene has to be rejected in the light of earlier decision of this Court and taking into consideration the realities in the matter of supply of kerosene to the weaker section of the society. If kerosene is sold in a fixed place it would be in the interest of consumers. After all the consumers interest cannot be forgotten or overlooked in a matter like this. The hidden interest of the consumers has to be protected and for this reason the respondents are insisting for a shop in the matter of distribution of kerosene. In fact this very ground has been upheld in the earlier petitions. In these circumstances the prayer for setting aside these orders cannot be considered. In fact I am of the view the present impugned orders are in continuation of the earlier orders of 31-5-99. Taking into consideration an over all view of the matter I do not find any justification to quash the orders in the light of the law governing these licensing orders. The withdrawal of the cards for non-compliance cannot be termed as either unreasonable or arbitrary.

16. I must also notice another contention of difficulties as contended by the petitioners. I cannot but point out that when a new policy or change is made, there are bound to be certain difficulties in the matter. Mere difficulties by themselves cannot render an order an illegal one. As I mentioned earlier there are advantages and disadvantages in a new system and the advantage to consumers is a disadvantage to hawkers. At any rate it is not a ground that could be considered by a Court of law for striking down a reasoned regulatory measure. Therefore, this argument is rejected.

17. Counsel say that this Court has provided certain suggestions in the earlier judgment. At that time the commission was only 0.25 Ps. per liter the same has been increased by another 5 paise. The Court has also noticed in that case that there are more than 20000 hawkers and therefore they should be given more time in the matter and as a matter of fact Court ordered status quo till the end of year 2000. Now we are in the end of 2001. Sufficient time therefore is granted to the hawkers to have their own shops. Therefore, the question of suffering now has been mitigated by this Court by grant of status quo order earlier and also by this time so granted by me now. This Court as a matter of fact made it clear in

the earlier order that what is stated in para 12 is only a suggestion but not a direction.

18. The respondents have filed a statement providing information with regard to number of districtwise hawkers. Most of the hawkers have already converted themselves in terms of the order. There remains only 1714 hawkers as on today. This is also a matter that can be taken judicial notice of by this Court.

19. The Supreme Court in the case of Secretary, H.S.E.B Vs. Suresh and Others etc. etc., , has noticed the concept of equality in the following words :

The equality clause in the constitution does not speak of mere formal equality before the law but embodies the concept of real and substantive equality which strikes at the inequalities arising on account of vast social and economic differentiation and is thus consequently an essential ingredient of social and economic justice. The security clause in the Constitution has been equated to mean the people of the country ought to be secured of socio economic justice by way of a fusion of Fundamental Rights and Directive principles of State Policy. Socialism ought not to be treated as a mere concept or an ideal, but the same has to be practised in every sphere of life and be treated by the law Courts as a constitutional mandate since the law Courts exist for the society and required to act as a guardian angel of the society. As a matter of fact the socialistic concept of society is very well laid in Part III and Part IV of the Constitution and the Constitution being supreme, it is a bounden duty of the law Courts to give shape and offer reality to such a concept."

20. In the light of this ruling the socialistic concept of philosophy has to apply not only to these hawkers but also to weaker consumers.

21. Taking into consideration all these aspects of the matter I do not find any justifiable grounds to interfere in these cases. However, I deem it proper to make a suggestion in the matter of removal of practical difficulties faced by these hawkers. One essential grievance is with regard to their financial conditions. They say that shop is a luxury insofar as these hawkers are concerned. Therefore, I deem it proper to suggest to the Government to provide a low interest loan to these hawkers with Government guarantee if possible for obtaining shops through any nationalised banks or through co-operative financial institutions to obviate practical financial difficulties. This suggestion is only a food for thought in liberating these hawkers from the burden of investment as complained by them. I am told that some of the petitioners have got themselves converted in to new system. In all cases where the hawkers are yet to get themselves converted to the present system they are only given a month's time to convert into new system. No further extension of time is permissible to them. This one month time is also given only as a stopgap measure to them subject to their filing an undertaking to comply with this order within a month.

22. In the result these petitions fall. Parties to bear their respective costs.