**(2014) 07 SHI CK 0145**

**In the High Court Of Himachal Pradesh**

**Case No :** CWP No. 1908 of 2014

Raj Kumar APPELLANT

Vs

State of Himachal Pradesh RESPONDENT

**Date of Decision :** 02-07-2014

**Acts Referred:**
Constitution of India, 1950 — Article 14

**Citation :** (2014) 07 SHI CK 0145

**Hon'ble Judges :** Mansoor Ahmad Mir, C.J;Tarlok Singh Chauhan, J

**Bench :** Division Bench

**Advocate :** Anand Sharma, Advocate for the Appellant; Shrawan Dogra, Advocate General, Romesh Verma, V.S. Chauhan, Addl. A. Gs, J.K. Verma, Kush Sharma, Dy. A. Gs. and Archana Dutt, Advocate for the Respondent

**Final Decision :** Dismissed

## Judgement

Tarlok Singh Chauhan, J.—Petitioner has approached this Court for grant of following substantive reliefs:

(a). A writ of certiorari for quashing the orders passed by the learned Appellate Authority-cum-Principal Secretary (FSC&CA) to the Government of Himachal Pradesh in appeal No. 7 of 2013, decided on 23rd November, 2013 titled as Gaurav Batotra versus Public Distribution Committee, Chamba and others vide annexure P-16.

(b) Writ of mandamus directing the respondents to permit the petitioner to continue as depot holder being licencee having valid licence No. 42/PDS/Mehta by the District Controller FCS&CA, Chamba and also renewed from time to time up to 31st December, 2014 vide annexure P-9.

2. The petitioner appears to have been allotted the fair price shop by the District Controller, Food Civil Supplies & Consumer Affairs, Chamba after recommendation of the District Level Public Distribution Committee. Aggrieved by such decision, the respondent No. 5 filed an appeal before the Director, Food

Civil Supplies & Consumer Affairs on the ground that he had submitted an application alongwith the resolution passed by the Mangla Service Cooperative Society, Mangla on 27.1.2011 whereby the Society had unanimously resolved that the fair price shop be allotted to respondent No. 5 subject to the condition that he would pay 25% of the income to the Society. He further submitted that the allotment of fair price shop in favour of the petitioner had been made without following procedure and guidelines framed by the department. However, the said appeal was dismissed vide order dated 28.12.2011.

3. The matter was thereafter carried in appeal by the respondent No. 5 before the Appellate Authority-cum-Principal Secretary (FCS&CA) to the Govt. of H.P., who after hearing the parties concluded that the Public Distribution Committee in its meeting held on 2.6.2011 had inter alia recommended opening of an individual fair price shop at Mangla Panchayat but not in favour of the present petitioner. It was further observed that in terms of the guidelines issued by the Government with regard to opening of fair price shop, once the permission for opening of a new fair price shop has been accorded, the department was required to issue a notice, which in turn, was to be given wide publicity in the concerned Panchayat for submission of applications within a period of three weeks time. On the basis of the record, it was concluded that this procedure has not been adopted in the present case and therefore this action was not only violative but was even contrary to the guidelines issued by the Government. After quashing the authorization letter issued by the respondent No. 2 in favour of the petitioner, the official respondents were directed to initiate the fresh selection process strictly in accordance to the guidelines issued by the Government in compliance to the orders of this Court in LPAs No. 12/2007 and 14/2007, respectively. The respondents were further directed to give due publicity while seeking application for the allotment of fair price shop.

4. It is against this order that the present writ petition has been filed by the petitioner on the ground that the Appellate Authority did not even mention what instructions and directions of this Court had been violated. It is further contended that there was open publicity by way of advertisement which appeared in various newspapers wherein the factum of allotment of fair price shop was made known to the public. It was also claimed that the petitioner had been working to the satisfaction of the public for the last 21/2 years and, therefore, the allotment made in his favour ought not to have been cancelled.

5. The official respondents have contested the claim of the petitioner by filing reply by claiming that no doubt wide publicity in the newspaper i.e. ''Amar Ujala'' was given with respect to allotment of the fair price shop and the petitioner being a single applicant was allotted fair price shop which was running smoothly without any complaint. However, in view of the order passed by the Appellate Authority whereby the entire process had been set-aside, the official respondents had chosen to implement the order by inviting fresh applications.

6. The respondent No. 5 filed a separate reply wherein he placed reliance on the

order passed by the Appellate Authority to contend that the allotment of fair price shop in favour of the petitioner was vitiated as the same had not been made in accordance with the fair procedure and even the guidelines issued by the Government in this regard had not been followed. It was further averred that there was no advertisement in the newspaper. It was further submitted that the last date for submission of the form in fact was not 21.6.2011 and despite the respondent No. 5 having submitted the application on 20.6.2011 for the purpose, the same was arbitrarily not considered.

7. We have heard learned counsel for the parties and have also gone through the records carefully.

8. At the outset, it may be observed that this is a case pertaining to distribution of largesse at the instance of the respondents and is therefore to be tested on the touchstone of Article 14 of the Constitution. A State action has to be tested for constitutional infirmities qua Article 14 of the Constitution. Needless to observe that the action has to be fair, reasonable, non-discriminatory, transparent, non-capricious, unbiased, without favouritism or nepotism, in pursuit of promotion of healthy competition and equitable treatment. It has to conform to the norms which are rational, informed with reasons and guided by public interest etc. All these principles are inherent in the fundamental conception of Article 14 because this is the mandate of Article 14 of the Constitution of India. The absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional scheme is based. In a system governed by the rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law.

9. The action of the State even in contractual fields will have to be tested on the following touchstone:

(i) The State action in the contractual field are meant for public good and in public interest and are expected to be fair and just.

(ii) It would be alien to the constitutional scheme to accept the argument of exclusion of Article 14 of the Constitution of India in contractual matters.

(iii) The fact that a dispute falls in the domain of contractual obligation, would make no difference to a challenge raised under Article 14 of the Constitution of India on the ground that the impugned act is arbitrary, unfair and unreasonable.

(iv) Every State action must be informed of reason and it follows that an act uninformed by reason is arbitrary.

(v) Where no plausible reason or principle is indicated (or is discernible), and where the impugned action ex facie appears to be arbitrary, the onus shifts on the State to justify its action as fair and reasonable.

(vi) Every holder of public office is accountable to the people in whom the sovereignty vests. All powers vested in a public office, even in the field of contract, are meant to be exercised for public good and for promoting public interest.

(vii) Article 14 of the Constitution of India applies also to matters of governmental policy even in contractual matters, and if the policy or any action of the Government fails to satisfy the test of reasonableness, the same would be unconstitutional. (See: Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, ).

Thus, what is essential is that the State and its instrumentalities and their functionaries while exercising their executive power in matters of trade or business etc. including making of contracts, should bear in mind the public interest, public purpose and public good. This is so, because every holder of public office by virtue of which he acts on behalf of the State, or its instrumentalities, is ultimately accountable to the people in whom sovereignty vests and as such, all powers vested in the State are meant to be exercised for public good and in public interest. Therefore, the question of unfettered discretion in an executive authority just does not arise. The fetters on discretion are clear, transparent and objective criteria or procedure which promotes public interest, public purpose and public good. A public authority is ordained, therefore to act, reasonably and in good faith and upon lawful and relevant grounds of public interest. (Refer: Reliance Natural Resources Ltd. Vs. Reliance Industries Ltd., ).

Bearing in mind the guiding principles laid down in the Constitution of India alongwith law laid down by the Hon''ble Supreme Court from time to time, we proceed to determine the writ petition.

10. From the case set out by the petitioner himself, it is absolutely clear that even prior to the process having been initiated for allotment of the fair price shop in question, the petitioner already had recommendation in his favour on 2.6.2011 from the Public Distribution Committee on the basis of which he was given the fair price shop. As per the admitted case of the petitioner, an advertisement had been issued in the newspaper on 7.6.2011 giving 21 days clear notice for inviting applications for allotment of fair price shops. In response thereto, the respondent No. 5 had applied on 20.6.2011 as would be clear from the form annexed by the petitioner himself as Annexure P-9. Therefore, what the respondents appears to have done in this case is to have placed ''cart before the horse'' because admittedly the process for allotment of fair price shops was initiated on 7.6.2011 and apparently prior to that recommendation in favour of the petitioner had already been made on 2.6.2011. Not only this, the form of respondent No. 5 which had admittedly been submitted on 20.6.2011 was not even considered on

 

the ground that the same had been submitted beyond the prescribed period. We fail to understand as to how on the date of submission of the form by the respondent No. 5 i.e. on 20.6.2011 did the time period of 21 days expire. In case the period is computed from the date of so called advertisement, even then, the same was published on 7.6.2011 and the time would, therefore in terms thereof come to an end on 28.6.2011. Alternatively even if the same is to be counted from the date of grant of recommendation in favour of the petitioner on 2.6.2011, even then, the period of 21 days would not come to an end atleast on 20.6.2011.

11. We now deal with the next question as to whether there was wide publicity made before allotment of the fair price shop. We have gone through the records and find that infact there was no advertisement whatsoever issued by the respondents regarding allotment of fair price shop in question. What has been termed to be an advertisement is in fact a newspaper report published on 7.6.2011 regarding the allotment of fair price shops which news-item admittedly is not at the instance or behest of the respondents. Though, the instructions issued by the Government with regard to opening of the fair price shops have not been placed by either of the parties to this lis, however, the detailed guidelines and instructions have been issued by the learned Single Judge of this Court in CWP No. 1037 of 2003 titled The Hallan-1 Co-operative Consumer Store Ltd. vs. State of H.P. and others, decided on 30.4.2007, which are as follows:

(i) Respondents No. 1 to 4 should strictly implement Annexures P-3 and P-4 while allotting fair price shops.

ii) The preferences mentioned in Annexures P-3 and P-4 are to be adhered to strictly to shun arbitrariness.

iii) In any eventuality, the Cooperative Societies is not available for running the fair price shop, the H.P. State Civil Supplies Corporation should be permitted to open their retail outlet for the distribution of essential commodities under the public distribution system.

iv) In case neither the Cooperative Societies nor H.P. State Civil Supplies Corporation is available or forthcoming, in that event persons including ex-servicemen, handicapped or unemployed educated youth are to be considered.

v) Proper notice is to be published either in two vernacular newspapers or by any known mode of publication including the affixation of notice at the Panchayat Ghar, Municipal Counsel office and Nagar Panchayat office. In the advertisement, exact location of fair price shop is required to be mentioned.

vi) On the basis of the advertisement/publication, the applications from the categories mentioned in Annexures P-3 and P-4 are to be called, scrutinized by due date as shown in the advertisement and the suitability of the candidates is to be adjudged by the Deputy Commissioner of the concerned District.

vii) The Deputy Commissioners in the State shall maintain the record of the selection for allotment of fair price shops.

viii) The Deputy Commissioners may also evolve system of allotting marks to adjudge the suitability of the candidates and therein the preference is to be given to the most educated candidates available.

12. No doubt, an appeal by way of LPA No. 12 of 2007 was preferred against this judgment. However, the judgment of the learned Single Judge was modified only to the extent that instead of carrying out publication in the two vernacular newspapers or any other mode of publication as had been directed by the learned Single Judge, it was directed that the notices be published by affixation of notices at Panchayat Ghar, Municipal Committee''s office and Nagar Panchayat Offices and in addition to above, the notices may also be published outside the Govt. schools in the area as well as by way of Munadi in the area by beat of drum as would be clear from the following abstract from the judgment:

...Moreover, the learned Single Judge had directed that proper notice be published either in two vernacular newspapers or by any known mode of publication including affixation of the notices at the Panchayat Ghar. In this regard, we are of the view that since the fair price shop is to be opened in remote area, the issuance of publication in two vernacular newspapers will be a costly affair for the Panchayat and will not serve any useful purpose. Therefore, the order passed in this regard by the learned Single Judge is modified to this extent that the notices shall be published by affixation of notices at Panchayat Ghar, Municipal Committee''s office and Nagar Panchayat Offices and in addition to above, the said notices may also be placed outside the Govt. schools in the area as well as by way of Munadi in the area by beat of drum....

13. From the records, it is established that none of the directions and guidelines as issued by the learned Single Judge have been followed by the respondents, more particularly the directions relating to publication of notice by affixation at various places as had been directed in LPA No. 12 of 2007 have also not been followed while making allotment of the fair price shop. Neither there is any pleading nor any material placed before us showing compliance of such directions and guidelines.

14. Therefore, the action of the respondents in allotting the fair price shop in favour of the petitioner is not only arbitrary but is unfair, unreasonable or non-discriminatory and actuated by favouritism and nepotism. Apart therefrom, it does not seek to promote healthy competition or equitable treatment and is not even guided by public interest. The action of the respondents instead of being transparent is totally opaque and therefore not sustainable in the eyes of law and accordingly, the allotment made in favour of the petitioner by respondent No. 4, i.e. District Controller, Food Civil Supplies, Chamba, District Chamba, H.P. is quashed and set aside.

15. The respondents are directed to initiate fresh selection process for allotment of the fair price shop within a period of two months strictly in conformity with the

 

judgment passed by this Court in CWP No. 1037 of 2003 decided on 30.4.2007 as modified in LPA No. 12 of 2007 and on the basis of the guidelines issued by the respondents themselves on the basis of the aforesaid judgments and also to ensure that the allotment confirms to the test of Article 14 of the Constitution and is held in a fair, reasonable, non-discriminatory, transparent, non-capricious and unbiased method which promotes healthy competition and meets equitable treatment to all and is guided by the public interest.

16. In view of above, the writ petition is dismissed, so also the pending application(s) if any.