(2021) 02 J&K CK 0057

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 304 Of 2021, CM No. 1525, 1526 Of 2021

Rajesh Kumar & Ors APPELLANT

Vs

Ut Of J&K And Others RESPONDENT

Date of Decision : 22-02-2021

Acts Referred:
Constitution Of India, 1950 — Article 14

Citation : (2021) 02 J&K CK 0057

Hon'ble Judges : Dhiraj Singh Thakur, J

Bench : Single Bench

Advocate : Mehtab Gulzar

Final Decision : Dismissed

Judgement

1. The petitioners are all fair price shops dealersâ?? appointed by the Department of Food Civil Supplies and Consumer Affair, Jammu (earlier

CAPD Department) and stated to have been engaged in the sale of food grains under the public distribution system to the consumers in different

villages on commission basis.

2. The grievance of the petitioners has its genesis in the policy decision taken by the Govt. of supplying rations on door to door basis to the consumers

and in doing so, the petitioners apprehend that there would be a fall in the profits by way of commission.

3. Counsel for the petitioners also tried to emphasize that there would be no accountability in the system sought to be adopted by the Govt. and that the

system that was in vogue for the last twenty years be not discontinued as the same had proved successful without giving any cause or grievance to

any consumer whatsoever.

4. The issue that requires to be considered by this court is whether the policy being adopted by the official respondents of supplying rations at the door

step of the consumers is a policy, which is bad or perverse.

5. The scope of judicial review in policy matters is no longer res integra. It is settled law that the Courts would not ordinarily interfere with the policy

decision of the executive unless the same could be faulted on the grounds of malafides, unreasonableness, arbitrariness or unfairness, in which case

the policy would render itself to be declared as unconstitutional. In State of Punjab and others Vs Ram Lubhaya Bagga and others; (1998)4 SCC 117,

it was held thus:-

â??â?¦â?¦â?¦â?¦..When Government forms its policy, it is based on number of circumstances on facts, law including constraints based on its resources.

It is also based on expert opinion. it would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts

set out on affidavits. The Court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be

seen whether the new policy violates Article 21 When it restricts reimbursement on account of its financial constraints.â??

6. On similar lines was the pronouncement of Apex Court in case of Ugar Sugar Works Ltd. V/s Delhi Administration and others; (2001)3 SCC 635,

wherein the Apex Court held as under:-

â??The challenge, thus, in effect, is to the executive policy regulating trade in liquor in Delhi. It is well settled that the Courts, in exercise of their

power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide,

unreasonableness, arbitrariness or unfairness etc. Indeed, arbitrariness, irrationality, perversity and mala fide will render the policy unconstitutional.

However, if the policy cannot be faulted on any of these grounds, the mere fact that it would hurt business interests of a party, does not justify

invalidating the policy. In tax and economic regulation cases, there are good reasons for judicial restraint, if not judicial deference, to judgment of the

executive. The Courts are not expected to express their opinion as to whether at a particular point of time or in a particular situation any such policy

should have been adopted or not. It is best left to the discretion of the State.â?? (Emphasis supplied)

7. In Balco Employees Union (Regd.) V/s Union of India and others; (2002)2 SCC 333, the Apex Court in paragraph 92 & 98 held as under:-

â??92. In a democracy, it is the prerogative of each elected Government to follow it's own policy. Often a change in Government may result in the

shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is

committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with

by the Court

98. In the case of a policy decision on economic matters, the Courts should be very circumspect in conducting any enquiry or investigation and must

be most reluctant to impugn the judgement of the experts who may have arrived at a conclusion unless the Court is satisfied that there is illegality in

the decision itself.â??

8. This view has recently been reiterated by the Apex Court in Parisons Agrotech Private Limited and another Vs Union of India and others; (2015)9

SCC 657 where in the Apex Court held thus:

â??14. No doubt, the writ court has adequate power of judicial review in respect of such decisions. However, once it is found that there is sufficient

material for taking a particular policy decision, bringing it within the four corners of Article 14 of the Constitution, power of judicial review would not

extend to determine the correctness of such a policy decision or to indulge into the exercise of finding out whether there could be more appropriate or

better alternatives. Once we find that parameters of Article 14 are satisfied; there was due application of mind in arriving at the decision which is

backed by cogent material; the decision is not arbitrary or irrational and; it is taken in public interest, the Court has to respect such a decision of the

Executive as the policy making is the domain of the Executive and the decision in question has passed the test of the judicial review.â??

9. Counsel for the petitioners, however, has failed to satisfy this court as to in what manner the proposed policy is perverse, arbitrary or irrational.

Rather the entire emphasis was laid only on the personal interest of the petitioners, who are apprehending fall in their profits through commission on

account of lower sales. Admittedly, the fair price shops are not wound up neither are the commissions being reduced by the Govt. The apprehension expressed by the petitioners that there would be a loss in profits on account of commission certainly cannot be a good ground for interference in the

proposed policy.

10. For the reasons mentioned above, the petition is found to be without any merit and is accordingly dismissed along with connected applications.

