

(2017) 12 OHC CK 0020

In the Orissa High Court

Case No : 16436 of 2017

Ranjeet Gram Panchat, Manjuri

APPELLANT

Vs

State of Orissa and another

RESPONDENT

Date of Decision : 12-12-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs

Citation : (2017) 12 OHC CK 0020

Hon'ble Judges : J.P. Das

Bench : SINGLE BENCH

Advocate : H.S. Mishra, K.K. Rout, T.K. Nayak, J. Naik, S. Rout, M. Panda, P.S. Nayak, S.K. Jena.

Judgement

1. This is an application under Article 226 of the Constitution of India alleging illegal and irregular acts committed by the opposite parties 1 to 5, specifically opposite party no.4, the concerned Block Development Officer in allotting the retailership for distribution of PDS materials in favour of one private person namely, opposite party no.6, violating the directions and rules framed by the government for allotment of such retailership to Grama Panchayats. Self Help Groups and other such similar bodies under the provisions of the National Food Security Act and the Public Distribution System Order 2016 (2016 order in short).

2. The present petition has been filed on behalf of the Ranjeet Gram Panchayat, Manjuri through its Sarpanch. Narrating different provisions and guidelines of the Government of India as well as of the State Government relating to issuance of licence for retailership in favour of the Grama Panchayats and such other bodies, it has been submitted that the opposite party no.4 with some ulterior motive has allotted the retailership in favour of opposite party no.6 vide Annexure-3. It was specifically submitted that for the beneficiaries under the Grama Panchayat of Ranjeet, the Grama Panchayat has been appointed as the retailer and simultaneously the opposite party no.6 has also been appointed as retailer which

is not permissible under the rules issued by the State Government. Placing the relevant order it was submitted that as stipulated in Clause-4 (6) of the 2016 order, the authority competent to appoint and to grant or renew licence under the 2016 order shall make efforts to replace private dealers with institutional dealers like Grama Panchayats or municipalities, as the case may be, Women Self Help Group, Cooperative Societies and Self Help Groups within a period of two years from the date of publication of the 2016 order i.e., 16.03.2016. Thus it was submitted by learned counsel for the petitioner that the appointment of opposite party no.6 as a retailer was in gross violation of the said order and hence, is liable to be set aside.

3. It was submitted on behalf of the State filing a counter affidavit sworn by the opposite party no.4 that the opposite party no.6 was continuing as a retailer since 2016 and his licence for such retailership was renewed in the month of March 2017. It was further submitted that the petitioner Grama Panchayat had not made any application within the stipulated period of 45 days and when their application was received it was promptly considered and in order to avoid any legal action from the side of opposite party no.6, since he was continuing with a renewed licence, the quota of supply was divided between the Grama Panchayat petitioner and the opposite party no.6, keeping in view the guidelines issued in OPDS (Control) Order 2016. It was also submitted that the petitioner was granted with licence only on 29.05.2017, i.e., two months after the licence of the opposite party no.6 was renewed.

4. The position that a benefit granted to the person could not have been taken away without due process of law in order to give it in favour of somebody else was fairly conceded to by the learned counsel for the petitioner. In the case at hand it is not disputed that the opposite party no.6 was continuing as the retailer and his licence for the purpose was renewed in the month of March 2017. The petitioner Grama Panchayat on its application was granted with the licence for the said purpose only on 29.05.2017. Thus it could not have been permissible on the part of the opposite parties to withdraw the retailership from the opposite party no.6 and to give the entire quota to the petitioner. Of course it was submitted by learned counsel for the petitioner that the licence for dealership and licence for retailership are two separate licences and licence of retailership of opposite party no.6 was not renewed. But I do not find any support from the relevant provisions to the said contention made on behalf of the petitioner. A copy of the renewal of licence of the opposite party no.6 by the Sub-Collector, Bhadrak has been placed on behalf of the State.

5. It was further submitted on behalf of the petitioner that as per the 2016 order, the authorities shall make efforts to replace the private dealers with institutional dealers. But it did not say that such dealership already granted to a private person shall be taken away and would be given to any institution. That apart the retailership is renewed every year and the current year 2017-18 is left with only four months.

6. In these circumstances, I do not find any illegality committed by the opposite parties, specifically the opposite party no.4, so as to issue any order under Article 226 of the Constitution of India.

7. The case law of this Court reported in 2017 (I) ILR Cuttack 506, Gambharimunda Grama Panchayat -vrs.- State of Odisha and others, was placed on behalf of the petitioner. But the facts of the said case were different since because, ignoring the institution the concerned authority had granted retailership in favour of the private individuals. Further in that case the retailership was taken out from the concerned Grama Panchayat and was given to some private individuals which was apparently contrary to the direction of the 2016 order. It needs no mention that the concerned authority shall keep in mind the guidelines issued by the State Government in 2016 order while distributing retailership for the next year. The writ petition is accordingly disposed of.