

(2019) 05 J&K CK 0059

In the Jammu And Kashmir High Court

Case No : Letters Patent Appeal (LPA) No. 105 Of 2018 In Other Writ Petition
(OWP) No. 1288 Of 2017

Satish Kumar And Ors

APPELLANT

Vs

State Of Jammu & Kashmir And Ors

RESPONDENT

Date of Decision : 30-05-2019

Acts Referred:

Jammu And Kashmir Government Business Rules — Rule 8

Citation : (2019) 05 J&K CK 0059

Hon'ble Judges : Rajesh Bindal, J; Sindhu Sharma, J

Bench : Division Bench

Advocate : Ankur Sharma, Seema Shekhar

Final Decision : Dismissed

Judgement

Rajesh Bindal, J

1. Challenge in the present intra court appeal is to the judgment of learned Single Judge dated 09.10.2017, vide which the writ petition filed by the appellant/writ petitioner was dismissed.

2. Briefly the facts as noticed by learned Single Judge are that the appellants claim that they are Fair Price Shops allottees. They challenged Government Order No.127-FCS&CA of 2016 dated 04.08.2016 on various grounds. Learned Single Judge finding no merit in the contentions raised by the appellants, dismissed the writ petition by a detailed judgment.

3. While assailing the judgment of learned Single Judge, learned counsel for the appellants laid stress primarily on two clauses of the Targeted Public Distribution System Control Order 2015, notified by the Ministry of Consumer Affairs, Food And Distribution. The submission is that the licences to the Fair Price Shops are to be issued keeping in view the viability thereof and further that the ration card holders attached to the Fair Price Shops are reasonable. The appellants were having above 1000 ration tickets. With the change in policy as notified vide

Government Order No. 127-FCS&CA of 2016 dated 04.08.2016, the limit of ration tickets has been fixed at 250. If return on the margin given on 250 ration tickets is calculated, the same will not be viable. He further referred to the report of a Committee constituted by Hon^{ble} the Supreme Court to go into the viability of the ration depot holders and also the mode adopted by State of Chhattisgarh. It was further submitted that Rule 8 of the Jammu and Kashmir Government Business Rules has been violated as before notifying the policy, the same was not placed before the Cabinet. While fairly not disputing that the Court has limited jurisdiction to enter into the policy matters, it was submitted that if the policy runs contrary to the scheme notified by the Government of India, validity thereof can be examined.

4. On the other hand, learned counsel for the respondents while defending the elaborate judgment of learned Single Judge submitted that the petitioners did not have any cause of action to approach this court. They are merely competitors. Their licences of Fair Price Shops have not been cancelled. Even as per earlier policy notified by the Government on 01.08.2003, the ration tickets allotted to a Fair Price Shop were 250. The same figure has been maintained. The Government has to ensure that ration to be supplied to the ration card holders is available at the nearest point. The appellants have not pleaded that the ration tickets already allotted to the petitioners have been reduced. No legal or fundamental right of the appellants has been violated. In fact, earlier the commission being paid to the ration depot holders was quite less, which was enhanced substantially in the year 2017. The report of the Committee constituted by Hon^{ble} the Supreme Court or the policy framed by State of Chhattisgarh cannot be relied upon by the appellants to impugn the policy framed by the State of Jammu and Kashmir. Each State has its own requirements keeping in view its topography. The Jammu and Kashmir Government Business Rules have not been violated, as no administrative set up is being changed.

5. Heard learned counsels for the parties and perused the paper book.

6. The judgment of learned Single Judge deals with all the issues raised by the appellants, threadbare. The policy for opening of Fair Price Shops under the Targeted Public Distribution System Control Order 2015, dated 04.08.2016, which was impugned in the writ petition filed by the appellants provides for certain guidelines for opening of new Fair Price Shops. The appellants primarily are aggrieved of some clauses in Part 'A' thereof, which read as under:

"A] Opening of New Fair Price Shops:-

(i) New Fair Price Shop shall be opened for every 250 RT's. However, existing Fair Price Shop holder will retain more RT's if there is no feasibility of opening second Fair Price Shop i.e. there can be upto 499 RTs with a FP Shop.

(ii) Rationees should have F.P. Shop/Govt. Sale Depots within radius of 1.5 to 2 km from their residence subject to having 250 RTs to be bifurcated.

(iii) Location of the F.P. Shop shall not be changed by the F.P.S holder without the written permission of concerned Assistant Director.

(iv) New FPS will be opened for every 200-250 families but if in a Revenue Village, if there are lesser families opening of new FPS will not be a constraint, however in case of hilly/inaccessible area opening FPS can be for lesser number of families also."

7. The aforesaid conditions laid down in the policy provide that new Fair Price Shop shall be opened for every 250 ration tickets. However, existing Fair Price Shop holders will retain more ration tickets, if there is no feasibility to open second Fair Price Shop. Another important condition is that rationees should have a Fair Price Shop within a radius of 1.5-2 KMs from their residence. A new Fair Price Shop can be opened even with lesser ration tickets if in a revenue village, there are less number of families. The challenge to the aforesaid conditions was sought to be made before the learned Single Judge. It has been specifically noted in the impugned judgment that the appellants had not specifically pleaded as to how the appellants, who were the existing ration depot holders, will be affected with the new policy. Examples of two of the writ petitioners were given who were running Fair Price Shops with less than 250 ration tickets. Further, the learned State Counsel had even referred to the earlier policy of the State as circulated on 01.08.2003. In terms thereof as well, for every 250 ration cards in a particular area or locality, one Fair Price Shop was to be opened. The position remains the same. While framing the policy, the State had also to ensure that the ration card holders get the ration close to their residence. In the year 2003, the State was paying 5 per cent of the sale value of the food grains minus the costs of empty gunny bags as the commission. However, later on vide Government Order No.312 dated 26.07.2017, the commission was increased to 25 per cent of the State's share of commission of ₹ 143/-per quintal.

8. It would be appropriate to extract the relevant clauses of the 2015 Control Order, which are as under:

"9. Licensing and regulation of fair price shops.

(1) to (4) xxxxxxxx

(5) The licences to the fair price shop owners shall be issued keeping in view the viability of the fair price shop.

(6) The State Government shall ensure that the number of ration card holders attached to a fair price shop are reasonable, the fair price shop is so located that the consumer or ration card holder does not have to face difficulty to reach the fair price shop and that proper coverage is ensured in hilly, desert, tribal and such other areas difficult to access.

(9) The State Government shall allow sale of commodities other than the food-grains distributed under the Targeted Public Distribution System at the fair price shop to improve the viability of the fair price shop operations."

9. While framing the policy, the State had taken into consideration all the aspects. Even otherwise, it is not a matter of dispute that the policy decisions of the executive are not justiciable. The Public Authorities have liberty and freedom to frame policies. In the complex socio-economic and commercial matters, decisions have to be taken by the Government Authorities keeping in view several factors. It is neither possible for the Courts nor it has the expertise to consider the competing claims of the parties to find out whether the policy is good or bad. The Court is ill-equipped to substitute its own opinion. The interference is possible by way of judicial review only when any policy is found to be against a statute or it offends any of the provisions of the Constitution or it is manifestly arbitrary, capricious or mala fide. If the aforesaid principles are applied in the case in case, the appellants have not been able to make out a case for interference on any of the grounds on which the Courts can interfere in a policy matter.

10. The contention that the report of the Committee constituted by Hon^{ble} the Supreme Court or the policy framed by the State of Chhattisgarh are better suited, is merely to be noticed and rejected as in the matter of policies, the State has to consider its own requirements and terrains, which are quite unique and specific in the State of Jammu and Kashmir. The learned Counsel for the appellants had not referred to any specific direction given by Hon^{ble} the Supreme Court with reference to policy for ration depot holders.

11. Even the contention that the Jammu and Kashmir Government Business Rules have been violated is merely to be noticed and rejected as proper procedure has been followed.

12. For the reasons mentioned above, we do not find any error in the judgment of learned Single Judge whereby the writ petition has been dismissed. While concurring with the reasons assigned, we do not find any merit in the present appeal. The same is accordingly dismissed.