

(2016) 08 KAR CK 0013

In the Karnataka High Court

Case No : Writ Petition No. 29632 of 2015 (GM-PDS).

**Siddaramu - Petitioner @HASH The Deputy Commissioner, Mandya
District, Mandya and Others**

Date of Decision : 03-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 6 KantLJ 339

Hon'ble Judges : A.S. Bopanna, J.

Bench : Single Bench

Advocate : Sri Gangadharappa, A.V. Advocate, for the Petitioner; Sri E.S. Indires, Additional Government Advocate, for the Respondent Nos.1 and 2; Sri M. Sreenivasa, Advocate, for the Respondent Nos.4 to 9; Sri Vijaya Krishna Bhat M, Advocate, for the Impleading Ap

Final Decision : Disposed Off

Judgement

A.S. Bopanna, J. - I.A. No. 3 of 2015 is filed by tire applicants therein seeking to come on record as additional respondents to the instant petition. The application is allowed and they are permitted to come on record as additional respondents and the learned Counsel representing them is also heard in the matter.

2. The petitioner is before this Court assailing the order dated 7-7-2015 passed by the first respondent impugned at Annexure-J to the petition.

3. Though the respondents have filed their objection statement and sought to justify the action, essentially, the consideration in the instant petition will have to be based on the earlier litigation's between the parties more particularly, when the petitioner was before this Court claiming to be aggrieved by a similar action taken by the first respondent to withdraw certain cards from the petitioner's fair price depot. Presently, by the order impugned, 168 cards from out of the total of 327 cards which had been allotted to the petitioner has been reduced and in addition to 159 cards that has been retained with the petitioner, the petitioner has been granted distribution to another 250 cardholders in Nitoor Village.

4. Though rival contentions have been urged with regard to distance bet ween

the present point to Nitoor Village, the issue essentially is not on that aspect of the matter. But, the issue for consideration is as to whether the first respondent while passing the present impugned order has kept in view the directions issued by this Court at an earlier point in W.P. No. 4896 of 2013, dated 8-12-2014. In that regard, though the learned Counsel for private respondents herein has referred to the order impugned at Annexure-J with regard to the observations made in the preamble portion, those are aspects which have reference to a period prior to the order dated 8-12-2014 passed in W.P. No. 4896 of 2013. In that view, a perusal of the order passed by this Court would disclose that the said order dated 22-12-2012 which is referred to in the impugned order was assailed in the said petition.

5. This Court, while taking note of the manner in which the number of cards allotted to the petitioner has been reduced, has also taken into consideration the contention of the respondents that the cardholders allotted to the petitioners were not willing to receive the essential commodities from the petitioner and it is in that light, action was required. This Court had also taken into consideration the fact that respondents had submitted, despite the efforts of the first respondent to resolve the matter, the same was not possible. It is in that light, the learned Judge was of the opinion that such a reason assigned to reduce the cards would not be justified.

6. Having set aside the order impugned therein, this Court had observed that it would not preclude the Deputy Commissioner to take steps for withdrawal of the ration cards/cancellation of the ration cards in accordance with law. The observations in the order and liberty reserved to initiate action in accordance with law on a composite consideration is to the effect that the withdrawal of the cards cannot be made by the Deputy Commissioner merely because, some of the cardholders had expressed unwillingness to receive the essential commodities from the petitioner's fair price depot. However, if the cardholders had any grievance with regard to the manner in which the distribution was being made and in the enquiry to be held, if such charge alleged against the petitioner is established in such proceedings, certainly, the authority concerned would be entitled to take a decision in the matter.

7. In such circumstance, though the learned Counsel for the private respondents relied on Order 11(3) of the Karnataka Essential Commodities (Public Distribution System) Control Order, 1992 with regard to the discretion available to the authority to transfer the ration card from one fair price shop to another if the authority considers it necessary, the said provision in the instant facts cannot be considered in abstract since, I have already taken note of the earlier order passed by this Court which required the authority to consider in a particular manner, if such action was to be taken.

8. Therefore, in that circumstance, if the order impugned is perused, the order essentially devotes the major portion of it to refer to the earlier proceedings that had taken place. Thereafter, it only states that despite all efforts, since the

cardholders are not willing to receive the essential commodities and 168 cardholders who have not received the food grains for the last two years belong to the below poverty line, it was the opinion of the Deputy Commissioner that action would have to be taken to withdraw the said cards and transfer it accordingly. Such conclusion in my opinion does not answer the requirement of a consideration in terms of the earlier order.

9. Yet another contention urged by the learned Counsel for some of the private respondents, who have been impleaded is that against the order impugned, a revision is permissible and therefore, the instant writ petition ought not be entertained.

10. It is also the contention of the learned Counsel that by the order impugned, though 168 cards have been withdrawn and transferred from the depot of the petitioner, in view of 250 cards being assigned to him in the neighbouring village, the petitioner gets more than the cards which had been allotted to him earlier and as such, the petitioner cannot have any grievance.

11. With regard to the first contention, keeping in view the fact that at an earlier point, this Court had directed consideration and pursuant to which the instant order is passed, even though the remedy of revision is available, the same will not take away the discretion of this Court to entertain the petition under Article 226 in a matter of the present nature, where the authority concerned repeated the very same mistake, despite direction being issued by this Court and when this Court is to ensure that its orders are appropriately complied.

12. Insofar as higher number of cards being assigned to the petitioner, considering that the same has been assigned at the different village, that by itself cannot be a reason to withdraw the cards which had already been allotted without any justifiable reasons. If all these aspects are kept in view, the order impugned certainly does not answer the requirement contemplated while disposing of W.P. No. 4896 of 2013, dated 8-12-2014. Therefore, the matter in any event would require reconsideration by the first respondent keeping in view the said observation.

13. Hence, the order impugned dated 7-7-2015 is set aside. The matter is remitted to the first respondent to provide opportunity to the petitioner as well as the cardholders, who have grievance against the petitioner and thereafter come to a conclusion on merits based on the allegation, if any established against the petitioner and not merely on the ground that some of the cardholders are not willing to receive the food grains from the petitioner's depot without there being any specific grievance with regard to the misdemeanour, if any committed by the petitioner. The petitioner herein and the private respondents herein shall appear before the first respondent on 22-8-2016 at 3.00 p.m. as the first date of hearing. The first respondent shall thereafter hold the proceedings and conclude the same as expeditiously as possible but, not later than four months from the date of first appearance.

14. In terms of the above, the petition stands disposed of. In view of disposal of the petition, I.A. Nos. 3 and 4 of 2015 are also disposed of.