

(2014) 01 KAR CK 0248

In the Karnataka High Court

Case No : Writ Petition No. 19761 of 2013 (GM-EC)

Sri Narayan

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 16-01-2014

Acts Referred:

Citation : (2014) 01 KAR CK 0248

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

Bench : Single Bench

Advocate : Amshith Hegde H.S, for the Appellant; Vijayakumar A. Patil, HC GP, for the Respondent

Final Decision : Disposed Off

Judgement

A.S. Bopanna, J.—The petitioner is before this Court assailing the order dated 02.02.2013 (Annexure-A) passed by the fourth respondent. The petitioner is also seeking for issue of mandamus to direct the second respondent not to issue any new license to start the fair price depot in the petitioner's village by bifurcating the existing ration cards. The petitioner has been granted authorization to run a fair price depot for distribution of food grains and other essential commodities, under the Karnataka Essential Commodities (Public Distribution System) Control Order 1992. The petitioner has been running the fair price depot from the year 1997. He contends that there has been no complaints whatsoever against him with regard to the manner in which he was conducting his business. When this was the position, the second respondent by the order dated 26.11.2010 has passed an order to grant new fair price depot by bifurcating the cards allotted to the petitioner. Though a Notification dated 29.11.2010 has been subsequently issued, no further steps has been taken in that regard in as much as by the subsequent order in respect of the cards removed from the petitioner's fair price depot. The essential commodities however is being distributed by mobile vans. The petitioner, therefore contends that the present action to bifurcate and remove 282 cards from the petitioner's fair price depot is actuated by malafides

in as much as certain persons belonging to the Uppara Community have refused to take the essential commodities from the petitioner's shop since he belongs to Schedule Caste. The learned counsel also refers to the Circulars issued by the Secretary to the Government, to the Deputy Commissioner stating that such practice cannot be resorted to. In the instant case, there is no other allegation except that a group of persons belonging to the Uppara Community having refused to receive the food grains from the petitioner's fair price depot. It is therefore contended that the Appellate Authority has not properly considered this aspect of the matter and as such, the order dated 02.02.2013 impugned at Annexure - "A" is also not sustainable.

2. The learned Government Advocate based on the instructions issued to him through the parawise comments would submit that the order passed by the Authority is in consequence with the power available to the Authorities under the Karnataka Essential Commodities (PDS) Control Order, 1992. It is contended that Clause 11 of the Order provides with regard to the assignment of the rations cards and in such circumstance, it would be also open for the Authorities to withdraw certain cards subject to the minimum number, i.e., provided therein being maintained. In the instant case, it is contended that since 282 card holders had not received the essential commodities and there were certain complaints against the petitioner with regard to his behaviour with the said card holders, the Authorities in the interest of the card holders had made alternate arrangement and the same does not call for interference.

3. In the light of the rival contentions, a perusal of the order dated 26.11.2010, no doubt appears to have been passed in an innocuous manner without reference to the nature of the contention which has been put forth by the petitioner regarding the reason for which the cards have been bifurcated and removed from the fair price depot assigned to the petitioner. However, what requires to be noticed is the communication dated 02.04.2009 (Annexure - "H" to the petition). A perusal of the same would indicate that the CEO of the Taluk Panchayath, Yelandur has reported to the Deputy Commissioner with regard to the fact where certain persons were not receiving the essential commodities from the petitioner's depot. A perusal of the same would disclose that the CEO has informed that a group of persons belonging to one community have complained that the petitioner is not behaving properly with the card holders and has been abusing the women and children who go to receive the food grains. It is also indicated therein that another group of persons who belong to the Community of the petitioner have however stated a different version indicating that the petitioner has been distributing the food grains in accordance with law and he has been courteous to the card holders and there is absolutely no complaints whatsoever. If this communication dated 02.04.2009 is kept in view, certainly the subsequent order dated 26.11.2010 is clear to have been influenced by the said report though the same does not find a place in the order dated 26.11.2010.

4. On the other hand, as already noticed, the said order also does not refer to

any other enquiry said to have been made by the Deputy Commissioner or through his subordinate officer, to come to a conclusion that 282 card holders belonging to a particular community should be removed from the fair price depot being run by the petitioner. If this aspect of the matter is kept in view, certainly it is not a case where the respondents, pursuant to any complaint against the petitioner has held an appropriate enquiry and has thereafter come to the said conclusion. Further, even though the power of assigning the appropriate number of cards to each fair price depot is available to the Authorities under Clause 11 of the order, the exercise of such power in the instant case does not appear to be bonafide more particularly in a circumstance where I have referred to the report dated 02.04.2009 which certainly has formed the basis for the present action.

5. Further, when in a circumstance where the card holders of a particular community have refused to receive the ration from the shop of the petitioner, and only such of the card holders of that community alone have made such grievance. The Respondent Authorities could not have jumped to a conclusion and should not have made the alternate arrangement. I am also of the said opinion for the reason that in the report, when there are two versions, namely, one group of card holders alleging that the petitioner was not courteous to them while the other group was of the opinion that he has been distributing the food grains in accordance with law and he has been courteous, the said complaint also has to be looked into from the background that the petitioner was distributing the food grains from the year 1997 when he was granted the authorization. For the first time, in the year 2009, such complaints have been made by persons belonging to one community and merely because, such allegation has been made by one group, that by itself should not have been the basis, when another group had stated that there are no complaints against the petitioner. In such a circumstance, the only option for the respondent should have been to hold an appropriate enquiry based on the allegations and thereafter, the respondent should have come to a conclusion and not otherwise. Therefore, the arbitrary manner in which the Deputy Commissioner has withdraw 282 cards which had been assigned to the fair price depot of the petitioner would not be sustainable more particularly in a circumstance where no enquiry whatsoever was held but such action was actuated by the complaint made by persons belonging to one community. Hence, the order dated 26.11.2010 is not sustainable. The same is accordingly quashed. Consequently, the order of the Appellate Authority approving such action by the order dated 02.02.2013 is also not sustainable. The same is also accordingly quashed.

The petition is disposed of in the above terms.