

(2015) 03 SHI CK 0091
In the High Court Of Himachal Pradesh
Case No : CWP No. 6936 of 2010-H

Surinder Kumar

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 19-03-2015

Acts Referred:

Citation : (2015) 03 SHI CK 0091

Hon'ble Judges : Tarlok Singh Chauhan, J.

Bench : Single Bench

Advocate : Ajay Sharma, for the Appellant; Virender Kumar Verma, Meenakshi Sharma and Rupinder Singh, Additional Advocate Generals, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Tarlok Singh Chauhan, J.—By medium of this writ petition, the petitioner has prayed for the following substantive relief:--

"a) That impugned orders i.e. Annexure: P-4, dated 25.9.2010 may very kindly be quashed and set aside with directions to the respondents to allot Fair Price Shop to the petitioner forthwith without any further delay, in the interest of law and justice." 2. It is not disputed that the father of the petitioner was allotted Fair Price Shop vide letter dated 22.10.1988, but he unfortunately expired in January, 2007 and owing to exigencies and further in view of the interest of the consumers, the respondent No. 4 vide resolution dated 03.02.2007 engaged the services of the petitioner as salesman in the society.

3. In terms of the guidelines issued by the State of Himachal Pradesh for allotment of Fair Price Shop annexed as Annexure P-1, the petitioner applied for allotment of the Fair Price Shop and the matter was sent for approval to the respondent No. 2 with all recommendations from the concerned quarters. However, the case of the petitioner was turned down vide order dated 25.09.2010 (for short "impugned order").

4. It is the specific case of the petitioner that while passing the impugned order, the respondents have failed to take into consideration the order passed by the Appellate Authority in Appeal No. 22 of 2008 preferred by the petitioner when his case was not being considered for allotment of the Fair Price Shop. The operative part of the order passed by the Appellate Authority reads thus:--

"I have considered the entire case in totality and find that there is nothing on record which shows that the case of the applicant was considered in the PDC meeting held on 6.9.2008. As per the revised guidelines of allotment of fair price shop issued in August, 2008 the case of legal heirs needs to be considered first before deciding the priority of allotment of the shop to other categories as indicated in the guidelines. As such the appeal is accepted and remanded back to Respondent No. 1 with the direction that the matter be placed afresh before the PDC of the district in the next meeting and consider the case of the appellant as per guidelines issued for allotment of the fair price shop." 5. The respondents No. 1 to 3 have filed their reply wherein it is stated that upon the death of petitioner's father as per resolution passed by the CAS Bandahu on 03.02.2007, the petitioner was appointed as salesman for Sanooh area by the society on temporary basis. The petitioner thereafter submitted his case for fresh authorization in the month of April, 2007 for running of Fair Price Shop in place of his late father. The matter was placed in the meeting of the Public Distribution Committee (for short "PDC") on 26.06.2007 and on the basis of the report submitted by the concerned Inspector, the matter was rejected due to the fact that the Cooperative Society had not issued "No Objection Certificate" in favour of the petitioner. In the meeting, it was further decided that the consumers of the Sanooh area will be attached nearby CAS Bandahu on temporary basis till the allotment of the Fair Price Shop at Sanooh.

6. It is then averred that the matter was again placed in the meeting of the "PDC" held on 18.02.2008, but as per the information given by the representatives of the Cooperative Department that the Agricultural Cooperative Society, Sanooh was not functional since 1980 and, therefore, it wanted a Fair Price Shop at Sanooh, the matter was again rejected in terms of the instructions (Annexure P-1) wherein it was provided that preference will be given to the cooperative sector and, therefore, there was no justification to issue authorization to individual person. Lastly, it was contended that the "PDC" in its meeting held on 06.09.2008 had allotted the Fair Price Shop in favour of the respondent No. 4 which shop is running since 1st November, 2008.

7. When the matter came up for consideration before this Court on 13.08.2014, the following orders came to be passed:--

"Heard for sometime. Let second respondent to clarify his position qua the order Annexure P-6 he passed on 27.2.2009 in the capacity of appellate authority holding therein that the petitioner being legal heir of late Shri Bhumi Chand, who was an allottee of fair price shop in village Sanoohan, is entitled on priority for the allotment of fair price shop in the said village and directed the District Food

and Supplies Controller, Kangra to place the matter afresh before District Public Distribution Committee for allotment of the fair price shop to the petitioner and the order Annexure P-6 dated 25.9.2010 in the capacity of Director, Food, Civil Supplies and Consumer Affairs, Himachal Pradesh, Shimla, rejecting thereby the claim of the petitioner on the ground that fair price shop in village Sanoohan cannot be allotted to him for want of requisite number of ration-cards." 8. In compliance to the aforesaid order, the respondents took a decision on 08.09.2014 and copy thereof has been placed along with supplementary affidavit as Annexure S-1. In the said decision, the respondents have given the following reasons for rejecting the claim of the petitioner:--

"On 6.09.2014, in the meeting of Public Distribution Committee, during the course of discussions and scrutiny of the old record, it was found that the Fair Price Shop sanctioned earlier in favour of CAS Sanooh has been sanctioned as per the rules. As far as, the question of not discussing the matter relating to Shri Surinder Kumar in the meeting of Public Distribution Committee held on 6.09.2008, on the scrutiny of the old record, it was found that the matter of Shri Surinder Kumar has already been rejected in the earlier two meetings held on 26.06.2007 and 18.02.2008. It is also informed, although Fair Price Shop has been sanctioned in favour of CAS Sanooh in the Public Distribution Committee meeting held on 6.09.2008, but the process in this effect had been started in the Public Distribution Committee meeting held on 18.02.2008 and the report on the financial position of the CAS, Sanooh had been asked from the Assistant Registrar, Coop. Societies, Palampur in the Public Distribution Committee meeting held on 24.07.2008. Here, it is also informed that when the process to sanction the Fair Price Shop in favour of CAS Sanooh had been started (18.02.2008), at that time, there was no provision to allot the Fair Price Shop to the legal heir. Therefore, no irregularity of any type has been committed in respect to sanction the Fair Price Shop. Assistant Registrar, Coop. Societies, Palampur has informed in the meeting that presently the Fair Price Shop being run by cooperative society in Lambagaon block is functioning properly. Consumers have no complaint of any type. The Public Distribution Committee has decided that as the cooperative society is working properly so Fair Price Shop cannot be sanctioned to Shri Surinder Kumar by closing the Fair Price Shop being run by CAS Sanooh." I have heard the learned counsel for the parties and have gone through the records.

9. Indisputedly, the order passed by the Appellate Authority annexed with the writ petition as Annexure P-6 has attained finality and in terms thereof the case of the petitioner was required to be considered first before deciding the priority of allotment of shop for further categories as indicated in the guidelines.

10. In the teeth of the aforesaid order, it does not lie in the mouth of the respondents that it was the claim of the society which was required to be considered in preference to the claim raised by the petitioner. In case the respondents felt that the order of the Appellate Authority was not in tune with

the guidelines (Annexure P-1), then it was incumbent upon them to assail this order. It is more than settled that once an order is passed by the competent authority which exercises quasi judicial powers in nature, it would be binding on the department.

11. The learned counsel for the respondents would, however, argue that the petitioner being a legal heir of Fair Price Shop licensee cannot have preference in allotment of the Fair Price Shop over and above the Cooperative Society and in support of such submission have relied upon the judgment passed by the learned single Judge of this Court in CWP No. 2427 of 2012 in case titled Dayal Batta versus State of Himachal Pradesh and others decided on 17.07.2012 and affirmed by learned Division Bench in LPA No. 97 of 2013 in case titled Dayal Batta versus State of H.P. and others decided on 16.07.2013. This contention of the respondents cannot be accepted for more than one reasons.

12. Firstly, the order passed by the appellate authority vide Annexure P-6 has attained finality. Secondly, the allotment in Dayal Batta's case (supra) related to the allotment of kerosene oil depot and admittedly the mother of the petitioner therein was not a licensee of a Fair Price Shop and it was in this background held that the petitioner therein could not have preference for allotment of the kerosene oil depot.

13. It cannot be disputed that in terms of the guidelines even the legal heirs of a Fair Price Shop licensee are to be given preference in allotment of fair price shop in the event of death of the licensee subject to suitability and it was for this precise reason that the Appellate Authority after taking note of these guidelines has directed the respondents to first consider the case of the petitioner before deciding the priority of allotment of the shop to other categories as indicated in the guidelines. The respondents having failed to consider the directions passed by the Appellate Authority cannot deny the petitioner a right of consideration based upon the directions so passed by the Appellate Authority.

14. The writ petition is accordingly allowed and the orders passed by the respondent No. 2 on 25.09.2010 (Annexure P-4) and further the proceedings of the meeting of the District Level Public Distribution Committee held on 06.09.2014 rejecting the claim of the petitioner are quashed and set aside. The respondents are directed to consider the case of the petitioner for allotment of the Fair Price Shop afresh that too strictly in terms of the order passed by the Appellate Authority (Annexure P-6). The needful be done within four weeks.

15. Needless to say that the respondents shall pass a speaking order and in the event of the decision going against the petitioner, he is at liberty to approach this Court for redressal of his grievances.

16. Pending application, if any, also stands disposed of.