

(2014) 09 KAR CK 0206

In the Karnataka High Court

Case No : Writ Petition No. 27210/2014 (GM-PDS)

Swamy

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 18-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 1 AKR 473 : (2015) 1 KarLJ 299 : (2015) 3 KCCR 2281 :
(2014) 4 KCCR 3680

Hon'ble Judges : A.N. Venugopal Gowda, J

Bench : Single Bench

Advocate : A.V. Gangadharappa, Advocate for the Appellant; H.B. Mahesh,
HCGP and H.C. Shivaramu, Advocate for the Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopal Gowda, J.—Petitioner was a card holder in a fair price depot, which was run by the 6th respondent. Based on a complaint of the petitioner and few other card holders, inspection of the said fair price depot was conducted and a report of the irregularities noticed, having been submitted, Deputy Commissioner, Mysore District - 3rd respondent, served on the 6th respondent, a show cause notice. A reply having been submitted, 3rd respondent, on 20.05.2010, pending enquiry, suspended the authorisation granted to the 6th respondent and ordered for making alternative arrangement. By an order dated 23.11.2010, 3rd respondent cancelled the authorisation issued to the 6th respondent. Feeling aggrieved, Appeal No. 227/2010-11 was filed, under Clause 17 of KEC (PDS) Control Order, 1992 (for short "Control Order"), before the 2nd respondent. In the said appeal, an application filed by the petitioner and another, for impleading as additional respondents having been rejected on 17.03.2012, on the ground that the applicants are not necessary parties and the appeal can be decided on the basis of the available materials, the order, when questioned in W.P. No. 10411-12/2012, was set aside on 08.01.2013 and the 2nd respondent

was directed to grant opportunity of hearing to the petitioner and the other applicant. The 2nd respondent by an order dated 22.06.2013 having dismissed the said appeal, 6th respondent filed before the 1st respondent, Revision Petition No. 50/ECA/2013, under Clause 20 of the Control order. Revision petition having been allowed and the 3rd respondent having been directed to take necessary steps, to restore the authorisation issued under Clause 3 of the Control Order, feeling aggrieved, this writ petition was filed.

2. Sri A.V. Gangadharappa, learned advocate, firstly, contended that the Order passed by the Appellate Authority being final, is not revisable by the Government. He submitted that appellate power has been exercised by the Government, purportedly under the guise of revisional jurisdiction. Secondly, Deputy Commissioner having noticed the irregularities in distribution of commodities by the 6th respondent, had cancelled the authorisation for valid reasons and the said order having been confirmed in appeal, interference by the 1st respondent is wholly arbitrary and illegal. Thirdly, without any application of mind, revisional jurisdiction has been exercised by the 1st respondent and in the impugned order, there being no reasons, except narrating the arguments of the contesting parties, interference is called for.

3. Sri H.C. Shivaramu, learned advocate, on the other hand, firstly, contended that the writ petition has been filed at the behest of another person, who is running a FDP point at Chidarahalli village and in favour of whom, alternate arrangement was made by the 3rd respondent, while passing the order dated 23.11.2010 i.e., while cancelling the authorisation issued in favour of the 6th respondent. He submitted that out of 618 ration cards allotted in favour of the 6th respondent, except the petitioner and another, none else had any grievance in the matter of distribution of the essential commodities. He contended that the petitioner has no locus standi to file this writ petition. Secondly, order dated 23.11.2010 was passed by Sri Harsh Gupta, while he was the Deputy Commissioner of Mysore District and that Sri Harsh Gupta, in the capacity as Commissioner and Director of Food, Civil Supplies and Consumer Affairs, illegally dismissed the appeal and thereby upholding his own order, passed in the capacity of the Authorised Authority. He submitted that, since both the orders dated 20.05.2010 and 23.11.2010, in the capacity as Authorised Authority and the Appellate Authority were passed by the one and same person, acting with material impropriety and the same also suffer from bias, the 1st respondent is justified in examining the proceedings of the cases decided by the Authorised Authority and the Appellate Authority and in passing the order dated 29.04.2014. He submitted that Clause 20 of the Control Order confers wide power on the Government to call for and examine the record of any case arising under the provisions of the Control Order, for the purpose of satisfying itself as to the legality or propriety of the decision or order passed by either the Authorised Authority or the Appellate Authority and as to the regularity of the proceedings of such Officer/s and pass appropriate orders. He submitted that the order passed by the Authorised Authority being not a considered and/or reasoned order and

unsustainable both on facts and law, the 1st respondent is justified in setting aside the same. He submitted that in view of the illegality committed by the one and the same officer, acting both as the Authorised Authority and also as the Appellate Authority, the 1st respondent is justified in allowing the revision petition and hence, no interference with the impugned order is called for.

4. In view of the rival contentions and the record of the case, point for consideration is whether the 1st respondent is justified in exercising the power under Clause 20 of the Control Order and in allowing the revision petition?

5. Sri Harsh Gupta, while working as the Deputy Commissioner, Mysore District and in the capacity as the Authorised Authority, passed the order as at Annexure-F, in exercise of the power under Clause 12 of the Control Order. When an appeal, under Clause 17 of the Control Order was filed against the said order, Sri Harsh Gupta, was working as Commissioner and Director of Food and Civil Supplies and Consumer Affairs, Government of Karnataka/Appellate Authority and passed the order vide Annexure-G, which reads as follows:

6. The question which, therefore, arises is, whether Sri Harsh-Gupta, could sit in appeal under Clause 17 and decide the case filed against his own order passed under Clause 12 of the Control Order?

7. In *Ranjit Thakur Vs. Union of India (UOI) and Others*, , on the question of "coram non-judice", Apex Court has held as follows:

"16. It is the essence of a judgment that it is made after due observance of the judicial process; that the court or tribunal passing it observes, at least the minimal requirements of natural justice; is composed of impartial persons acting fairly and without bias and in good faith. A judgment which is the result of bias or want of impartiality is a nullity and the trial "coram non-judice". (See AIR 1945 38 (Privy Council) .)"

(emphasis supplied)

8. In *R. Viswanathan Vs. Rukn-ul-Mulk Syed Abdul Wajid*, , Apex Court has held as follows:

"52.....It is of the essence of a judicial trial that the atmosphere in which it is held must be of calm detachment and dispassionate and unbiased application of the mind. It may be pertinent to observe that since the Federal Court was constituted and after this Court was invested with jurisdiction to try appeals there has occurred no case-our attention has not been invited to any-in which a Judge who had tried a case in the High Court or elsewhere sat in appeal against his own judgment sitting in the Federal Court or in this Court. The practices prevailing in the High Courts of including a Judge against whose judgment an appeal or proceedings in the nature of an appeal is filed, appears to have also fallen into desuetude and it is proper that it should. Whatever may have been the historical reasons in England and whatever may be the technical view as to the constitution of a Bench in which one or more Judges sit after they have

expressed their opinion -not tentative but final,- the practice which permits a Judge to sit in appeal against his own judgment or in cases in which he had an opportunity of making up his mind and to express his conclusion on the merits of the dispute has little to commend itself for acceptance....."

(emphasis supplied)

9. There is no dispute that the proceeding relating to appeal under Clause 17 of Control Order is a quasi judicial proceeding. The same is required to be decided with an unbiased mind, held in an open Court, to ensure transparency. Principles of natural justice are required to be observed and one of the requirements of natural justice is that the hearing should be done by the Authority with an unbiased mind. "Bias" has many forms and one such "bias" is on account of judicial obstinacy. Once Sri Harsh Gupta had decided the case in exercise of the power under clause 12 I.e., as "Authorised Authority", he could not have sat in appeal, filed under Clause 17, against his own order and upheld the order put under challenge, by acting as the Appellate Authority. Thus, the order passed in Appeal is void.

10. Clause 20 of the Control Order being relevant, is extracted below:

"20. Power to call for and examine records.- The Government may suo motu or on an application made to it by an aggrieved person, at any time call for and examine the record of any enquiry or proceedings of any officer exercising or failing to exercise the powers under this order, to suspend or cancel any authorisation issued for the purpose of satisfying itself as to the legality or the propriety of any decision or order passed by such officer and as to the regularity of the proceedings of such officer may pass such order thereon as it thinks fit, provided that the State Government shall not pass any order under this clause which adversely affects any person unless such person has been given a reasonable opportunity of being heard."

While exercising the said power, the Government may suo motu or an application made by an aggrieved person, may call for and examine the record of any enquiry or proceeding of any officer exercising or failing to exercise the powers under the Order for the purpose of satisfying itself as to the legality or the propriety of any decision or order passed by such officer and as to the regularity of the proceedings of such officer and may pass such order thereon as it thinks fit after giving reasonable opportunity of being heard to any person who is likely to be adversely affected by such order. The said power is not limited in its scope but it is also not as wide as the power of the Appellate Authority under Clause 17.

11. There being apparent illegality in the matter of deciding the appeal filed under Clause 17 by the 2nd respondent and the order passed being void, the 6th respondent was justified in invoking Clause 20 and approaching the 1st respondent for relief.

12. There is mis-trial insofar as deciding of the appeal vide order at Annexure-G.

The said order is coram non-judice. The order as at Annexure-F is not a considered order. There is mere narration of the dates and events and an abrupt conclusion, without any kind of appreciation of the record. Thus, the orders at Annexures-F & G being arbitrary and illegal, the 1st respondent is justified in passing the order at Annexure-H.

13. Having carefully gone through the record and having scrutinized the orders of the Authorised Authority, the Appellate Authority and also the Government, in my opinion, the 1st respondent has not exceeded its jurisdiction in interfering with the orders passed by the Authorised Authority and Appellate Authority. I do not find the approach of the 1st respondent in dealing with the case to be either arbitrary or illegal and warranting interference with the order at Annexure-H, in exercise of the power under Article 226 of the Constitution of India.

The writ petition is, therefore, dismissed. However, the Authorised Authority is required to decide the matter afresh by giving reasonable opportunity of hearing to the 6th respondent and the petitioner. In order to expedite the decision by the 3rd respondent, the 6th respondent and the petitioner are directed to appear before the said authority, on 25.10.2014 at 3.00 p.m. and receive further orders.

Till the 3rd respondent decides the matter, the alternative arrangement made for distribution of food grains shall continue.

No costs.