
(2016) 11 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 730 of 2016 a/w Others Writ Petition (OWP) No. 1597 of 2015, OWP Nos. 83, 1201, 1227, 1057, 1315, 1339 of 2016

Talib Hussain

APPELLANT

Vs

State of J&K

RESPONDENT

Date of Decision : 08-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Constitution of Jammu and Kashmir, 1956 — Section 103
Essential Commodities Act, 1955 — Section 3

Citation : (2017) AIR(J&K) 6

Hon'ble Judges : Mr. Alok Aradhe, J.

Bench : Single Bench

Advocate : Mr. Jahangir Iqbal Ganai, AG and Mrs. Seema Khajooria Shekhar, SR AAG, for the Respondents; Mr. N.D. Qazi, Advocate, for the Petitioners

Final Decision : Dismissed

Judgement

Mr. Alok Aradhe, J. - OWP No. 1597/2015

In this writ petition preferred under Article 226 of the Constitution of India read with Section 103 of the Constitution of J&K State, the petitioners

inter alia seek writ of prohibition restraining the respondents from opening new fair price shops in Jammu Division on the ground that the same is in

violation of the Cabinet Decision dated 16.07.2014. The petitioners also seek writ of mandamus directing the respondents not to bifurcate the

ration cards pertaining to the petitioners? fair price shops. In order to appreciate the petitioners? grievance, few facts need mention, which are

stated infra.

2. The petitioners have been granted licences to run fair price shops in Paristan

Hallan/Bass (Ukhral), Hoochak, Chulie Gujrara Senibati, Maligam

Panchayat-A, Phagmullah Panchal, Bengara and Kundra Pogal Parstan from the year, 1997, 2006, 2004, 1994, 1992, 1997 and 2010

respectively. In view of order dated 01.08.2003 issued by the State Government, the petitioners, who are Ration Dealers of various fair price

shops, are getting 5% of sales value of the food grains as commission. It is case of the petitioners that large numbers of complaints were received

by the State Government with regard to the irregularities in distribution of the foodstuff. Thereupon, the State Government with a view to provide

food grains at the nearest possible distance to the public in general and with a view to increase the sale outlets in compliance of the National Food

Security Act, 2013 proposed to formulate a scheme in order to control the network of sale depots, by opening 7967 shops under the name and

style of ""Government Controlled Sales Depot"" including existing Fair Price Shops. Such sales depots were required to cater the needs of 200 to

250 families. It is pleaded in the petition that the State Government passed order dated 14.03.2014 along with memorandum for submission to the

Cabinet for opening 7697 departmental sale outlets and for engaging 7696 salesman and 7696 helpers to run these Government sales outlets. The

monthly honorarium of Rs. 4500/- was required to be paid to the Salesmen and Rs. 3000/- per month was to be paid to the Helpers. It is the case

of the petitioners that the aforesaid memorandum submitted to the Cabinet was approved by the Cabinet vide order dated 16.07.2014 and the

Consumer Affairs and Public Distribution Department was authorised to open 7697 sales outlets in replacement of existing Fair Price Shops and

the outlet functioning through internal adjustment by engaging 7697 Salesmen and even number of helpers.

3. Thereafter, in pursuance to the decision dated 16.07.2014 taken by the Cabinet, the Secretary, Consumer Affairs and Public Distribution

Department, J&K Civil; Secretariat, Srinagar vide communication dated 01.08.2014 directed the Directors of the Consumer Affairs and Public

Distribution Department of both the divisions of the State to finalize the locations, where sale centres needs to be established and the licences for

running the Fair Price Shops were required to be surrendered. It is further pleaded in the petition that the petitioners have surrendered their

licences, however, respondent No. 1 issued notice dated 11.09.2015, by which meeting was convened on 14.09.2015 with regard to the opening

of the New Fair Price Shops in violation of the decision taken by the Cabinet. In the aforesaid factual background, the petitioners have

approached this Court.

4. Learned counsel for the petitioners submitted that the respondents have taken contradictory stand inasmuch as in response to OWP No.

1389/2014, in which the validity of order dated 06.08.2014 was challenged, respondents have taken stand that in view of the complaints received

from the consumers with regard to irregularities in distribution of the foodstuff, decision has been taken to convert the ration shops into Government

Controlled Sales Depots, whereas now in the objections, stand it is stated that the Government once again wants to open more new fair price

shops. It is further submitted that the respondents have not approached this Court with clean hands. It is further submitted that the respondents

have violated the interim order dated 30.11.2015 passed by a bench of this Court, by which the respondents were restrained from opening fair

price shops. It is urged that the Cabinet decision dated 16.07.2014 cannot be superseded by order dated 04.08.2016. In this connection,

reference has been made to Rule 20(1) of Jammu and Kashmir Business Rules, 1968. It is also urged that no justification has been offered on

behalf of the respondents for opening of new fair price shops instead of Government Controlled Sales Depots.

5. On the other hand, learned Advocate General submitted that the petitioners, who are residents of district Ramban, have sought relief in the writ

petition in a representative capacity, which is not permissible in law, and none of the fundamental rights of the petitioners is violated. While referring

to relief No. 2 claimed in the writ petition, it is argued that the petitioners have not surrendered their licences and attempt is being made by them to

create monopoly. It is further submitted that Cabinet decision dated 16.07.2014 did not culminate into passing of order on behalf of the State

Government as required under Section 45 of the Constitution of the State of Jammu and Kashmir, therefore, no writ of mandamus can be sought

to implement the Cabinet decision. It is also submitted that the provisions of National Food Security Act, 2013 were made applicable to the State

of J&K vide order dated 04.01.2016 wherein the State Government has to provide ration to 20 lacs more beneficiaries. Therefore, a policy

decision was taken on 04.08.2016 to open new fair price shops.

6. It is submitted that the policy decision has been taken to open new fair price shops in public interest so as to provide ration at doorsteps and the

policy has been framed on the basis of rational and reasonable criteria and the decision has been taken in public interest. It is argued that the scope

of the judicial review in respect of the policy decisions is extremely limited. Learned counsel for the respondents has placed reliance on the

decisions of the Supreme Court in case of District Collector and anr. v. B. Suresh and ors., (1999) 5 SCC 612, Bajaj Hindustan Limited

v. Sir Shadi Lal Enterprises Limited and anr, (2011) 1 SCC 614 and decision of this Court in case of Mohammed Amin Dar and ors. v.

State of J&K and ors, 2011 (4) JKJ 132 and Mohd Amin Dar v. State and ors., 2012 (4) JKJ 206.

7. I have considered the submissions made by both the sides and have perused the record. The scope of interference with the wisdom of the policy

decision taken by the executive is well settled. The Supreme Court in the case of Balco Employees Union (Regd.) v. Union of India & Ors,

(2002) 2 SCC 333 held that wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be

demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the Courts to consider relative

merits of different economic policies and consider whether a wiser or better one can be evolved. In the case of P.T.R. Exports (Madras) (P)

Ltd. v. Union of India (1996) 5 SCC 268, it is held that the power to frame a policy by executive or legislative decision included the power to

withdraw the same. The aforesaid decision in the case of Balco Employees Union (Regd.) v. Union of India & Ors. (supra) was subsequently

upheld by the Supreme Court in the case of Bajaj Hindustan Limited v. Sir Shadi Lal Enterprises Limited and anr. (supra). It is well settled

in law that no person fundamentally to be appointed as an agent of a fair price shop under a Government Scheme (See M.P. Ration Vekreta

Sangh Socy. v. State of MP, AIR 1981 SC 2001). Also see P. Dharni and others v. Government of Tamil Nadu and others, (2013) 7

SCC 289 and Kuchchh Jai Sankat Nivaran Samiti v. State of Gujarat, (2013) 12 SCC 226.

8. In the backdrop of aforesaid well settled legal position, facts of the case in hand may be seen. In exercise of powers under section 3 of the

Essential Commodities Act, 1955, the Central Government issued an order namely, 'Public Distribution System (Control) order 2001' for

maintaining supplies and distribution of essential commodities. The State Government in pursuance of provisions of Public Distribution System

(Control) order 2001 issued guidelines regarding opening of fair price shops on commission basis. Thereafter, the State Government had initiated

proposal for conversion of existing private Ration Shops into Govt. Sale Outlets, which was approved by the Cabinet. However, the decision

taken by the Cabinet did not culminate into passing of an order on behalf of State Government. In December, 2015, the State Government took

decision to implement National Food Security Act, 2013 in the State of J&K and in pursuance of Policy decision of the Cabinet, an order dated

04.01.2016 was passed by which sanction for implementation of the 2013 Act in the State with effect from 01.02.2016 was granted. On account

of implementation of National Food Security Act, 2013, the number of beneficiaries increased from 99 lacs to 119 lacs. Thus, there was increase

in the number of beneficiaries by 20 lacs. Therefore, the State Government felt the need to open new fair price shops. It is pertinent to mention that

under the new policy, the existing fair shops shall not be closed or converted to the Government sales depot, but additional fair shops shall be

opened. It is noteworthy that order dated 04.08.2016 has been issued in supersession of all previous Government orders.

9. By an order dated 02.09.2016 issued by the State Government, sanction has been accorded to establishment of 4388 new fair price shops on

commission basis, out of which 2263 shops shall be opened in Jammu, whereas 2125 shops shall be opened in Kashmir. Thus, new fair price

shops are being opened by the State Government to ensure smooth supply of ration to the beneficiaries at the door step. As per the policy the new

ration shops have to be located within a radius of 1.5 to 2 Kms. from the residence of beneficiaries and each shop will cater to the needs of 250

beneficiaries. Thus the policy decision has been taken by the State Government in public interest which by no stretch of imagination can be said to

be either arbitrary or irrational, warranting interference of this Court in exercise of powers of Judicial Review. Even for yet another reason, no relief

can be granted to the petitioners as this Court cannot issue mandamus to frame policy in a particular manner. (See Census Commissioner and

others v. R. Krishnamurthy 2015 2 SCC 796).

10. It is also relevant to mention here that the petitioners in no way affected by implementation of new policy as they would continue to run the fair

price shops on commission basis. Otherwise also, the petitioners neither have any legal or fundamental right to be appointed as an agent of a fair

price shop under a Government scheme, therefore, the petitioners cannot seek a writ of mandamus to enforce the decision taken by the Cabinet on

16.07.2014, which did not culminate into an order as required under section 45 of the Constitution of Jammu and Kashmir and which otherwise

stands superseded by an order of the State Government dated 04.08.2016.

11. The petitioners have no legal right to insist that fair price shops should be converted to Government controlled depots. The policy decision has

been taken by the State Government to cater to needs of 20 lacs additional beneficiaries and this Court cannot interfere with the policy decision

merely on the ground that another view is policy.

12. In view of preceding analysis, I do not find any merit in this writ petition. In the result the same fails and is hereby dismissed.

OWP No. 730/2016, OWP No. 83/2016,

OWP No. 1201/2016, OWP No. 1227/2016,

OWP No. 1057/2016, OWP No. 1315/2016 & OWP No. 1339/2016

For the reasons assigned by this Court in the detailed order passed in OWP No. 1597/2015, these writ petitions are also dismissed on the same

analogy.