
(2008) 06 KL CK 0060
In the High Court Of Kerala
Case No : Writ Petition No. 26481 of 2006

Usha Chandran

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 12-06-2008

Acts Referred:

Citation : AIR 2008 Ker 230 : (2008) 3 ILR (Ker) 153

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : M.K. Damodaran and C.A. Majeed and P.K. Vijayamohanan, for the Appellant; A.G. Venganoor K. Chandrasekharan Nair, Sr. Govt. Pleader, P.K. Babu, T.S. Radhakrishna Pillai, T.R. Rajeev, R. Parathasarathy, C.S. Ajith Prakash and A.L. George, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The issue involved in all these cases pertain to selection of Authorised Wholesale Dealer for distribution of ration articles to the retail dealers in the Trichur Taluk. The competent authority to make selection namely, the District Collector, Trichur, issued notification on 10.8.2004 for appointment of a wholesale dealer for the distribution of ration articles. Ten persons made application for selection. The District Collector considered the relative claims of all the applicants and by Ext.P6 order dated 9.6.2005 produced in W.P. 26481/2006, selected the petitioner in that W.P. for appointment. Out of the nine other contestants, 7 persons who are arrayed as respondents 6 to 12 in W.P. 26481/2006 filed appeals against Ext.P6 order before the Civil Supplies Commissioner under clause 51(10)(2) of the Kerala Rationing Order, 1966. Since relative claims of the appellants over the grantee were to be considered and the findings of the District Collector were challenged, the Civil Supplies Commissioner got a report through the Vigilance Officer of the department pertaining to the facts stated by the Collector. The Vigilance Officer after conducting field enquiry confirmed substantially the findings on facts by the Collector in the order appealed against. However, besides reporting on other matters, the Vigilance Officer informed the Civil Supplies Commissioner that it

may not be proper to retain 133 retail shops under one wholesale distributor. In short, the Collector's notification and selection of a single wholesale distributor to cater to the needs of 133 retail shops was adversely commented upon by him. The Civil Supplies Commissioner agreed with the apprehension expressed by the Vigilance Officer and he held that from past experience it has been established that a wholesale distributor may not be able to handle more than 50-60 retail shops. In other words, he was of the view that for the efficient distribution of ration articles in time to the retail dealers, the wholesaler should have only manageable number of retail shops attached to him. Consequent upon this finding, the Civil Supplies Commissioner disposed of all the appeals by vacating the order of the District Collector and with further direction to the Collector to divide the area to be covered by two or three wholesale dealers and to make fresh appointments. The order in appeal issued by the Civil Supplies Commissioner on 7.2.2006 is produced as Ext.P8 in W.P. 26481/2006. Even though another round of appeals were filed against Ext.P8 order of the Civil Supplies Commissioner, the Government vide Ext.P10 produced in the same W.P. concurred with the views of the Commissioner and upheld his order. The petitioners in these W.Ps. are challenging the abovereferred orders of the Civil Supplies Commissioner and the Government. I have heard counsel appearing for the petitioners, counsel appearing for the respondents and the Additional Advocate General appearing for the State.

2. The first ground raised by all the parties is that the Commissioner of Civil Supplies as well as the Government have exceeded their powers in appeal by giving direction to the Collector to make fresh selection after reallotting the retail dealers under two or three wholesale dealers in the Trichur Taluk. The Additional Advocate General appearing for the State and Government agencies supported the orders of the Commissioner and the Government and besides this, he has also stated that Government as a matter of policy proposes to appoint Civil Supplies Corporation which is a Government Corporation, for wholesale distribution of ration articles. In order to consider whether the orders passed by the Commissioner and the Government in appeal are within their powers, this Court has to necessarily consider their powers, particularly the powers in appeal under the Kerala Rationing Order 1966. For easy reference the relevant clauses namely clause 51(10) and (11), clause 51A and clause 71 of the Kerala Rationing Order are extracted hereunder:

51(10) Any person aggrieved by any order passed under this clause may within thirty days from the date of service of such order appeal:

- (1) In the case of an order passed by the Commissioner to the Government.
- (2) In the case of an order passed by the District Collector to the Commissioner.
- (3) In the case of an order passed by any other officer to such authority as the Government may specify in this behalf and the decision of the Government, Commissioner or such authority shall subject to the provisions of Sub-clause (11)

be final.

51(11) The Commissioner may either suo motu or on application, call for and examine the records of any order passed by a subordinate authority under the provisions of this clause, for the purpose of satisfying himself as to the legality or to the propriety of such order, and may:

(a) confirm, modify or set aside the order;

(b) impose any penalty or set aside, reduce, confirm or enhance the penalty imposed by the order;

(c) remit the case to the authority which made the order or any other authority directing such further action or enquiry as the Commissioner considers proper in the circumstances of the case;

or

(d) pass such other order as the Commissioner may deem fit.

51A(1) Notwithstanding anything contained in Clause 51 or any contract to the contrary, if at any time, the Government are of opinion that in the interest of the general public, it is necessary or expedient so to do, the Government may, by general or special order, cancel the appointment of any or all or any class of authorised wholesale distributors after giving an opportunity to such distributor or distributors of being heard; and such order of the Government shall be final.

71. The Government may, either suo motu or on application from any person call for and examine the records of any order passed by the Commissioner or any other subordinate authority under the provisions of this Order for the purpose of satisfying themselves as to the legality or to the propriety of such order and may pass such interlocutory orders as are deemed necessary and also pass such final orders in reference to the record as the Government may deem fit.

3. The appeals filed against the Collector's order by the unsuccessful candidates are obviously under clause 51(10)(2) of the Rationing Order. However, it is seen that the Commissioner of Civil Supplies is entrusted with wide powers under Sub-clause (11) of clause 51 authorising him either suo motu or on application, to call for and examine records of any order passed by any subordinate authority under the provisions of this clause for the purpose of satisfying himself as to the legality or propriety of such order and he is vested with powers to confirm, modify or set aside such order and among other things, he is given the freedom to pass such other orders as he deems fit. The order passed by the Collector against which appeals are filed, is certainly an order which can be revised by the Commissioner of Civil Supplies either suo motu or on application under Sub-clause (11). In fact even an appellate order passed by a subordinate authority under Sub-clause (10)(3) could also be revised by the Commissioner under Sub-clause (11). In other words, while exercising the appellate powers under Sub-clause (10)(2) above, the Commissioner has all the powers conferred on him

under Sub-clause (11) above which authorises the Commissioner to pass such other orders as he may deem fit. There can be no dispute that the powers conferred on the Commissioner are very wide and the purpose is to correct illegal and improper orders or actions of subordinate authorities. There is subtle distinction between legality and propriety of an order because every order which could be treated as legally passed may not be a proper order. In order to consider whether the order passed is legal and proper, the object and purpose of the legislation has to be considered. The object of the Kerala Rationing Order as stated in the Preamble is to maintain supply of certain essential commodities and for securing their equitable distribution and availability at fair price. The scheme of distribution of ration articles to the public is through retail dealers who in turn are supplied by wholesalers. It is the finding of the Commissioner based on the caution expressed by the Vigilance Officer that past experience of the department proves that a wholesaler cannot effectively serve more than 50-60 retailers. Unless the ration articles reach from wholesalers to the retailers in time, the same cannot be distributed among the public who are the beneficiaries. Therefore, in the appointment of wholesalers, it is the duty of the authorities appointing them to ensure that they efficiently function in as much as there is no failure or delay in supply of ration articles by the wholesalers to the retailers. When the Head of the Department states that past experience shows that a wholesaler cannot promptly supply the articles to more than 50-60 retailers, there is no justification to appoint one wholesaler for as many as 133 retailers which is the result brought out by the Collector by selecting one person for the whole Taluk. Probably the Collector was only continuing the same scheme of one wholesaler handling as many as 133 dealers, but the same does not mean that a correction cannot be done for improvement of the system. I am of the view that the Commissioner being Head of the Department is bound to ensure that wholesale dealers function vi-ably and efficiently so that goods reach the retailers within time. Therefore, there is nothing wrong in limiting the number of retailers attached to a wholesaler so that distribution of ration articles take place in a smooth and efficient manner. If unmanageable number of retailers are attached to a wholesaler, obviously ration articles will not reach in time to the retailers which will lead to complete failure of the system. Even though counsel appearing for the petitioners contended that everso many wholesalers in the State are handling more than 100 retailers and a correction in Trichur alone is not warranted, I am unable to agree with this argument because a correction has to start somewhere and at some point of time. This should be an eye-opener for the department to limit retailers under one wholesaler in such a way that distribution takes place promptly and smoothly. As already stated, the Commissioner has authority to interfere with the appointment of one wholesaler if he is of the opinion that two or three are required for the efficient distribution of ration articles.

4. Therefore, I find no ground to interfere with the order in appeal issued by the Commissioner produced as Ext.P8 in W.P. 26481/2006. So far as the

Government's powers and jurisdiction are concerned, it is seen from clause 71 of the Rationing Order that the Government enjoys wide powers similar to the Commissioner as stated above to correct any order issued by any authority including the Commissioner. While the powers of the Government u/s 71 are similar to the Commissioner's powers under clause 51(11), the Government is given supervisory powers under clause 51A even to cancel appointment of any or all or any class of wholesale distributors, if the Government is of the opinion that the interest of general public will otherwise be affected. In other words, Government has not only supervisory power in the appointment of wholesale distributors, but has the authority to even cancel appointments already made in the interest of the general public. So far as distribution of ration articles is concerned, public interest demands equitable distribution of ration articles to all eligible persons. It is clear from this batch of cases itself that various parties have made substantial investment in taking and retaining godowns at high rate only to get the wholesale business in ration. It is common knowledge that the normal margin permitted in the wholesale business does not justify massive investments and the competition seen here is ample proof of the opportunity available for selling ration articles in black market. A fair procedure for selection of wholesale dealers provided in the Ration Control Order does not mean that the Government cannot take over business by itself or to entrust it to a Government Corporation like the Civil Supplies Corporation. Nobody has a vested right in being appointed as a wholesale dealer of ration articles. Therefore, it is always open to the Government to hand over the wholesale distribution of ration articles of any place or whole of the State to the Civil Supplies Corporation, if the Government feels that public interest and objects of the Rationing Order are better achieved by the same. If the Government decides so, then the chances of black marketing of ration articles can be avoided and probably more even distribution can be ensured. Even though it may be desirable for the Government to hand over wholesale distribution of ration articles to the Government Corporation namely, the Civil Supplies Corporation, I do not think this Court can compel the Government to do so. In fact, in a phased manner Government can assign the wholesale distribution of ration articles to the Civil Supplies Corporation in the whole State.

5. In view of the above findings, I uphold the impugned orders of the Commissioner of Civil Supplies and the Government produced as Exts.P8 and P10 respectively in W.P. 26481 /2006. There will be direction to the Government to immediately decide in principle whether Government should hand over distribution of wholesale ration articles in Trichur Taluk to the Civil Supplies Corporation and if it decides so, to do it at the earliest and in any case within a period of three months from now. Until then, the present temporary wholesale distributor should be allowed to carry on business. However, if the Government decides against handing over of business to the Civil Supplies Corporation, then there will be direction to the Collector to bifurcate the retail shops under two or three wholesalers in Trichur Taluk as directed by the Commissioner so that each

wholesaler will be able to efficiently distribute the articles in time to the retailers and make fresh selection after giving opportunity to old applicants and to fresh applicants to apply for the same and participate in the selection process. If Government decides against handing over to the Civil Supplies Corporation, the same should be communicated to the District Collector within a period of one month from today and in that event, the Collector will make the selection process afresh after dividing the area under two or three wholesale distributors as directed by the Commissioner, within two months thereafter.

The W.Ps. are disposed of as above.