

Vijay Kumar and Others Vs. State of Uttarakhand and Others

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Court : Uttaranchal

Decided On : Jul-26-2012

Judge : B.S. Verma

Appeal No. : Writ Petition (M/S) Nos. 270, 338 & 339 of 2012

Appellant : Vijay Kumar and Others

Respondent : State of Uttarakhand and Others

Judgement :

B.S. Verma, J.

Oral:

1. Heard.

2. Since the controversy involved in all these three writ petitions is similar, therefore, for the sake of convenience, they are being decided by this common judgment.

3. By means of these writ petitions, the petitioner in each case has sought a writ in the nature of certiorari quashing the impugned order dated 17-12-2011 passed by the District Supply Officer Udham Singh Nagar-respondent no.4 (Annexure-11 to the petition) whereby after approval of the District Magistrate, the agreement of fair price shop of the petitioners has been cancelled with immediate effect. The

Petitioners have also sought a writ of certiorari quashing the order dated 11-1-2012 passed by the Commissioner, Kumaun Division, Nainital, whereby the appeals preferred separately by each of the petitioners have been dismissed.

4. Brief facts giving rise to the present writ petitions, according to the petitioners, are that the petitioners are licence holders of fair price shops of different village within block Sitarganj, district Udham Singh Nagar and on 23-6-2011, they lifted 25 quintals, 20 quintals and 55 quintals of rice from the godown of Senior Marketing Inspector of the respondents and loaded the same in one truck bearing registration No. UA-06CA-1268 for carrying the rice to their respective fair price shops on the same day. An FIR was lodged against the petitioners and the driver of the said truck under Section 3/7 of the Essential Commodities Act by the Food Supply Inspector Sitarganj with the allegations that on Bijti road, the said truck No. UA-06-1268 was standing in front of the gate of M/s Ravi Rice Mill, Bijti Road, Sitarganj. Enquiry was allegedly made by Tehsildar and Supply Inspector concerned from the driver of the truck, who informed that the rice load in the truck belongs to the petitioners, which was lifted from the Sitarganj Godown of Senior Marketing Inspector.

5. In the impugned order passed by the District Supply Order on 17-12-2011, it is mentioned that since the said truck was found standing in front of the gate of Ravi Rice Mill, Bijti Road, Sitarganj and as the driver of the truck could not produce any relevant document in respect of the rice loaded thereon, the F.I.R. was lodged against all the three petitioners under Section 3/7 Essential Commodities Act for violation of Uttaranchal Scheduled Commodity Act, 2003. It is also mentioned therein that after obtaining approval from the District Magistrate, the agreement of the fair price shops of the petitioners was cancelled by order dated 1-7-2011 and explanation was called from them.

6. It appears that after the agreements of the fair price shops of the petitioners were suspended, the petitioners filed separate appeals against the suspension order before the Commissioner, Kumaun Division, which were registered as Appeal No. 32 of 2010-11 Man Singh Vs. State of Uttarakhand and another, Appeal No. 31 of 2010-11, Narendra Singh Vs. State and Appeal No. 33/2010-11,

Vijay Kumar Vs. State. The appellate court in its judgment dated 3-11-2011 has observed that the appellants lifted 100 quintals of rice from the Government Food Grain Godown and loaded the same in Truck No. UA 06 CA-1268; that the appellants-petitioners herein took the truck at Shiv Dharm Kanta and got the rice weighed there and the rice was found 100 Quintals, 75 kgs; that at about 1.20 p.m., the truck was found standing in front of the gate of Ravi Rice Mill, Sitarganj along with the driver but the petitioners were not present with the truck and that the FIR was lodge at 7.35 p.m., but the petitioners-appellants did not appear before the Tehsildar or the supply department to clarify the position, rather they remained absent. On the basis of these facts, the appellate court prima facie held that the intention of the appellants-petitioners herein was to indulge in black-marketing of the rice loaded in the said truck. The appellate court further observed that prima facie the facts are indicative that essential commodities have been misused.

7. Ultimately, the appellate court by a common order dated 3-11-2011, dismissed all the three appeals. The petitioners being aggrieved by the said order, preferred separate writ petitions before this Court.

8. This Court by separate order dated 15-11-2011 passed in each of the three writ petitions preferred by the petitioners has passed the order to the following effect:-

Considering the aforesaid fact, the Court is of the opinion that it would be appropriate if the matter is finally decided one way or the other with regard to the licence held by the petitioner. Since the petitioner has submitted the reply to the charge-sheet, the Court is not inclined to dwell into the validity and legality of the suspension order at this stage and the writ petition is disposed of with the direction to the competent authority to decide the matter with regard to the licence of the petitioner within four weeks from the date of production of a certified copy of this order after hearing the parties.

9. The District Supply Officer in compliance of the order passed by this Court directed the petitioner to put forth their defence with regard to suspension of the agreement of their fair price shop. The petitioners in turn filed their reply on 16-12-2011 and asserted in their reply that the petitioners had loaded the rice in the

truck in question and since the petitioners also deal in other items of use in their shop, they had gone to purchase necessary items like salt, soap, toffee, truth-brush, blade etc. for their customers in the village and they asked the driver to wait for them on the road. It was also pleaded that they had reweighed the rice for their satisfaction at Shiv Dharam Kanta. They also pleaded that the driver of the truck had stopped the truck on the road leading to their village and placed the truck along with wall of the rice mill and the driver kept waiting for the petitioners. The further alleged that the F.I.R. was lodged against them on wrong information under Section 3/7 of the Essential Commodities Act and they have been falsely implicated for the charge of black-marketing of rice without any evidence and that they were not interrogated at the time of lodging of F.I.R. by the supply inspector.

10. The learned District Supply Officer without dealing with the explanation/reply enumerated in 9 paragraphs by the petitioners has recorded a finding that since the rice was found on the loaded truck at the gate of Ravi Rice Mill and since the no explanation has come to get the rice reweighed at Dharam Kanta, it is established that the petitioners were guilty of misuse and black-marketing of the commodities and the said act is violation of terms and conditions of agreement, which is a punishable offence and ultimately by order dated 17-12-2011 cancelled the agreement of the fair price of the petitioners.

11. Aggrieved, the petitioners preferred separate appeals before the Commissioner, Kumaun Division, Nainital. In these appeals, the learned Commissioner has reiterated the same facts/observations numbered as 01, 02, 03 and 04 as it is without any change, which were detailed in the earlier order dated 3-11-2011. It is pertinent to mention here that on the strength of the aforesaid four points, the learned Commissioner has prima facie found the petitioners guilty of black-marketing of the rice lifted from the government fair price go-down. It is very interesting that the learned Commissioner even after filing of explanation/reply put forth by the petitioners in their defence came across the same facts again, but none of the grounds raised by the petitioners in their reply has been discussed in the judgment by the appellate court. Ultimately, the appeals preferred by the petitioners have been dismissed by common order dated 11-1-2012 and the impugned orders passed by the District Supply Officer have been upheld, which

gave rise to the present writ petition.

12. In the writ petitions, the petitioners have come up with the positive stand as detailed in paragraph no. 11 that because of the fair price shops of the petitioners were suspended by the respondents and in the suspension order, there is no indication of contemplation of enquiry. In paragraph no. 12, it has been stated that charge sheet was given to the petitioners by the District Supply Officer Udham Singh Nagar, which was replied along with relevant documents. Thereafter nothing was done.

13. Counter affidavit has been filed on behalf of the respondent no. 2 to 4 but in the counter affidavit in para 12, which is in reply to the averments made in paragraph 11 to 14, it is stated that the contents of para 11 to 14 of the writ petition need no comments. In paragraph no. 16 of the counter affidavit, it has been inter alia stated that the petitioner was not carrying the rice through main road as it was being carried out through Viji route for black marketing purpose and the truck was standing over on the gate of Ravi Rice Mill.

14. On behalf of the petitioners, rejoinder affidavit has been filed in each petition and therein the averments made in the memo of writ petitions have been reiterated and it has been stated that the petitioners have been falsely implicated in the alleged offence of black-marketing.

15. I have heard learned counsel for the parties and perused the entire material placed before this Court.

16. From a perusal of the pleadings of the parties coupled with the impugned orders passed by the District Supply Officer and the learned Commissioner, the main ground taken for cancellation of the agreement of fair price of shop of the petitioners is that truck loaded with the rice which had been lifted from the fair price go-down of the respondent was found standing in front of the gate of Ravi Rice Mill, therefore, the petitioners are guilty of black-marketing of the rice.

17. Learned counsel for the petitioners has firstly contended that on 1-7-2011, without any show cause notice, the agreement of the fair price shop of the

petitioners had been suspended by the respondent no.3- District Supply Officer Udham Singh Nagar, but the show cause notice was issued to them on 23-7-2011 alleging that the petitioners have violated the provisions of Uttaranchal Scheduled Commodity Act, 2003 and the petitioners were asked to submit their explanation within a period of seven days.

18. The petitioners submitted their reply to the show cause notice on 2-8-2011. In their reply, the petitioners have mentioned that they have lifted in all 100 quintals of rice from the fair price go-down for being taken to their fair price shop in different villages and that the petitioners had loaded the said rice in truck NO.UK 06CA-1268, which was being driven by the driver of the truck. When they were going to their village, they stopped the truck on Vijti road and directed the driver to wait for them, because they had some other work to do in the market. The petitioners had taken the positive stand that the quantity of rice lifted by them is entered in their stock register and that the petitioners had no intention for black-marketing of the rice and are not guilty of violation of any provision of law.

19. It is pertinent to note that in the first round of litigation, the order of suspension of fair price shop of the petitioners was passed by the District Supply Officer, which was assailed before the Commissioner in appeal. The appeals were dismissed by order dated 3-11-2011 by the learned Commissioner, Kumaun Division, Nainital. Aggrieved, the petitioners preferred separate writ petitions before this Court and ultimately, the writ petitions were disposed of on 15-11-2011 with a direction to the competent authority to decide the matter with regard to the licence of the petitioners after hearing them within a period of four weeks from the date of production of a certified copy of this order.

20. It may be mentioned here that the second round of litigation has started after the order dated 15-11-2011 of this Court.

21. In response to the notice dated 12-12-2011 issued by the District Supply Officer, the petitioners have stated that they were carrying the rice lifted by them through Canter/truck No. UK 06 CA-1268 and since they had to purchase some daily need articles like salt, soap, toffee, tooth-brush, blade etc. for their shops from Sitar Ganj market, they stopped the truck on the road leading to their village and

they had taken the stock register with them. The rice mill where the truck was standing is along the only road leading to their village. The petitioners have also stated that they have been wrongly challaned for black-marketing of the rice without any evidence, while the truck was found loaded with the entire quantity of rice, lifted by the petitioners.

22. The learned District Supply Officer without dealing with any of the contentions raised by the petitioners in their reply passed the impugned order dated 17-11-2011 thereby cancelling the agreement of fair price shop of the petitioners. It was observed by the District Supply Officer that since the petitioners got the rice lifted by them reweighed at Shiv Dharam Kanta and thereafter they stopped the truck at the gate of Ravi Rice Mill, Bijti Road, Sitarganj, for which no satisfactory explanation has come forth, therefore, the act on the part of the petitioners is indicative of black marketing and violation of the agreement.

23. The order passed by the District Supply Officer was again assailed in appeal by the petitioners, but the learned Commissioner after mentioning the four points, which were earlier mentioned by him in his previous order dated 3-11-2011 dismissed the appeals by order dated 11-1-2011, which is under challenge in these writ petitions. The learned appellate authority has not even considered any of the defence taken by the petitioners before the District Supply Officer.

24. Learned Senior Advocate, Mr. Rajendra Dobhal, assisted by Mr. R.K.Joshi, Advocate, has contended that on the basis of F.I.R. regarding which Criminal Case is pending against the petitioners under Section 3/7 of the Essential Commodities Act, the agreement of fair price shops of the petitioners cannot be cancelled, if there is no violation of any control order. Learned counsel for the petitioner drew attention of this Court to the provisions of the Uttaranchal Scheduled Commodities Distribution Order, 2003 learned counsel for the petitioner also drew attention of this Court to the provisions of the Uttaranchal Scheduled Commodities Distribution Order, 2003, wherein there is Clause 22, which lays down responsibilities and duties of the agent. Agent is a person authorised to run a fair price shop and in the case at hand it means the petitioners. The petitioners are not guilty of either of the duties and responsibilities as mentioned in aforesaid

Clause 22, therefore, the order of cancellation of the agreement of fair price shop of the petitioners is arbitrary and illegal. Learned Senior Advocate also submitted that the power to seize any Scheduled Commodities available to the Food Officer and other officers only comes into play when the officer concerned is satisfied that there has been contravention of the Uttaranchal Scheduled Commodities Distribution Order, 2003 on the part of the petitioner.

25. On the other hand in the counter affidavit filed on behalf of the respondents, the ground taken for cancellation of the agreement of fair price shops/licence of the petitioners is that because the truck in 10 question was found stopped at the factory gate with an intention and purposes of black marketing of the rice. According to the respondents, there was no need for the petitioners to get the rice lifted by them to be reweighed at some other Dharam Kanta and to get the truck in question stopped at the gate of Ravi Rice Mill. This act alone was found sufficient to hold the petitioners guilty for black marketing of rice and to pass the impugned order against the petitioners.

26. Learned Standing Counsel appearing on behalf of the respondents, while supporting the impugned orders passed by the respondents, has drawn the attention of this Court to the Uttar Pradesh Food-grain Dealers (Licensing and Restriction on Hoarding) Order, 1976 (for short 1976 Order) and submitted that the petitioners are guilty of Clause 7(1) appended to Form D, which provides that the licensee shall not enter into any transaction including purchase, sale or storage for sale of food grains in any speculative manner as mentioned therein. Learned State Counsel has submitted that since the truck loaded with the rice to be sold at fair price shops of the petitioners, which was being carried by the petitioners was found stopped at the gate of Ravi Rice Mill Sitarganj, therefore, the petitioners were rightly held guilty for black-marketing and their agreement has been rightly cancelled by the impugned order.

27. I have pondered over the matter. The District Supply Officer has power to suspend the licence and also to cancel the agreement of fair price shop, if there is violation of control order on the part of the petitioners.

28. Learned counsel for the petitioners in reply has submitted that in the State of Uttarakhand now the Uttaranchal Scheduled Commodities Distribution Order, 2003 is in force and the licence of the petitioners fair price shops were suspended under the provisions of Distribution Order, 2003 and explanation of the petitioners were called for on that score and no such allegation for contravention of the provisions of 1976 Order was ever levelled against them, no explanation was called for from the petitioners and no independent inquiry was made in the matter by the authorities concerned, therefore, the argument of the learned Standing Counsel is without any footing.

29. The argument of the learned Standing Counsel cannot be accepted for the simple reason that in the letter issued by the District Supply Officer to the petitioners on 23-7-2012, which has been termed as Charge-sheet, there is mention of violation of the provisions of Uttaranchal Scheduled Commodities Act, 2003 and that of Section 3/7 Essential Commodities Act and not that of 1976 Order, as contended by him, therefore, at this stage it does not lie in the mouth of learned Standing Counsel that petitioners were guilty of violation of 1976 Order, so as to justify the order of cancellation of agreement of fair price shops of the petitioners, particularly when in the counter affidavit also there is no such averment made on behalf of the respondents.

30. Having heard the submissions of the learned counsel for the parties and by a bare perusal of the impugned order passed by the District Supply Officer in the second round of litigation, it reveals that no independent inquiry was conducted either by the District Supply Officer himself or by the Up Zila Adhikari concerned to ascertain whether the rice in question was being transported by the petitioners for black marketing in the truck which was found stopped allegedly at the gate of a rice mill. From the material placed before this Court, even it cannot be presumed that there was any tampering with the rice lifted from the go-down of the respondents or that the rice was found less in quantity or otherwise. Merely on the basis of presumption, the impugned order of cancellation of agreement of fair price shops of the petitioners has been passed in a cursory manner. It is significant to note that the pleas raised by the petitioners in their reply submitted to the District Supply Officer in response to the notice issued to them after order dated 15-11-

2011 passed by this Court have not at all been considered either by the District Supply Officer or the learned Commissioner in appeal. Not only this, the learned Commissioner has again recorded the same four observations in his order 11-1-2012, which were earlier made in the earlier order dated 3-11-2011, while dismissing the appeals of the petitioners against suspension of licence. Learned Commissioner also lost sight of the explanations furnished by the petitioners containing 7-8 specific pleas, which were not at all dealt with. The petitioners were undisputedly not found guilty of either of the duties and responsibilities as prescribed under Clause 22 of the Uttaranchal Scheduled Commodities Distribution Order, 2003, which is applicable to the petitioners. Moreover, no such activity of black-marketing of rice was noticed by the raiding party of the supply department, when the truck was found stopped along with its driver at the gate of Ravi Rice Mill and presumption was raised that there was violation of the terms and conditions of the licence. Merely because the petitioners had got the rice reweighed at Shiv Dharam Kanta again after lifting the rice from godown and thereafter the truck was found stopped at the gate of Ravi Rice Mill along with the driver in itself is not sufficient to conclude that the petitioners had intention to indulge in the black marketing of the rice, particularly when the rice loaded in the truck was found in tact and according to the petitioners, there was entry of rice lifted by them in the stock register. Undisputedly, no independent inquiry was made by the District Supply Officer either himself or through Up Zila Adhikari to substantiate the allegations and to justify the cancellation of agreement of fair price shop. Even the District Supply Officer had not recorded the statement of the Tehsildar concerned, who visited the spot and who was the best witness to support the contention of the Department.

31. It is also pertinent to mention that the criminal case under Section 3/7 of the Essential Commodities Act is pending against the petitioners and the same is yet to be decided by the court concerned, therefore, unless and until the petitioners are convicted, the respondent authorities cannot be held to be justified to suspend or cancel the agreement of the fair price shop of the petitioners. The writ petitions therefore, deserve to be allowed outright and the impugned orders passed by the District Supply Officer as well as learned Commissioner, Kumaun Division, Nainital, are liable to be set aside.

32. All the three writ petitions are allowed. The impugned orders are set aside. The respondent-authorities are restrained from suspending or cancelling the agreement of the fair price shops of the petitioners. It is directed that the agreement of the fair price shops of the petitioners be renewed immediately within a period of thirty days. However, in case the petitioners are convicted in the criminal case, the authorities concerned would be at liberty to cancel the agreement.

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