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M.Jayakumar Vs. State of Kerala and 5 Others

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Court : Kerala

Decided On : Sep-25-2014

Judge : Honourable Mr.Justice C.K.Abdul Rehim

Appellant : M.Jayakumar

Respondent : State of Kerala and 5 Others

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM THURSDAY, THE25H DAYOF SEPTEMBER20143RD ASWINA, 1936 W.P.(C).No. 4486 of 2009 (H) ---------- PETITIONER: ---------- M.JAYAKUMAR , AGED34S/O.MUTHAYYA, HOUSE NO. TP IV/131, TEEKOY ESTATE TEEKOY PO, KOTTAYAM DISTRICT. BY ADVS.SRI.K.JAYAKUMAR SRI.BIMAL K.NATH SRI.S.JAMAL SRI.R.SURAJ KUMAR SRI.E.M.SUNIL KUMAR RESPONDENTS: ---------- 1. STATEOF KERALA, REPRESENTED BY SECRETARY,DEPARTMENT OF CIVIL SUPPLIES THIRUVANANTHAPURAM.

2. COMMISSIONER OF CIVIL SUPPLIES THIRUVANANTHAPURAM.

3. THE DISTRICT COLLECTOR, KOTTAYAM4 DISTRICT SUPPLY OFFICER, KOTTAYAM5 TALUK SUPPLY OFFICER, MEENACHIL TALUK, PALA.

6. SUNIL C.N., CHAKKOMPAKKAL HOUSE ADUKKAM PO, THALANADU PANCHAYATH, MEENACHIL TALUK KOTTAYAM. BY ADV. GOVERNMENT

PLEADER SRI.P.V.ELIAS THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON2509-2014, THE COURT ON THE SAME DAYDELIVERED THE FOLLOWING: W.P.(C).No. 4486 of 2009 (H) APPENDIX PETITIONER'S EXHIBITS: Ext.P1: True copy of the notification No.3150/2004 dated 22/2/2005. Ext.P2(a) & P2(b): True copy of the certificates issued by the Village Officer and Panchayat Secretary. Ext.P3: True copy of the order dated 7.7.2006. Ext.P4: True copy of the order dated 13.11.2006. Ext.P5: True copy of the order dated 11.8.07. Ext.P6: True copy of the order dated 15.2.2008 of the second respondent. Ext.P7: True copy of the appeal filed before the first respondent. Ext.P8: True copy of the judgment dated 23.6.2008 in W.P.(C) No.18719/2008. Ext.P9: True copy of the order dated 6.10.2008 of the first respondent. // True copy // P.A.to Judge C.K.ABDUL REHIM, J.

- W.P.(C)No.4486 OF2009- Dated this the 25th day of September, 2014

JUDGMENT

Subject matter involved in this writ petition relates to appointment of licensee to conduct the Authorised Ration Shop (ARD) No.173 of Meenachil Taluk. Pursuant to Ext.P1 notification inviting applications, the petitioner as well as the 6th respondent applied for the license. The 4th respondent after considering comparative merits of both the applicants, appointed the 6th respondent as licensee. Aggrieved by the appointment, petitioner preferred an appeal before the 3rd respondent. One among the contention taken was that the 6th respondent is not a resident of the locality and he is residing at a place about 15 kms away from the shop, within the limits of another Panchayat. The 3rd respondent had disposed of the appeal through Ext.P3, finding that the 6th respondent is not qualified to be appointed as licensee because he is not a permanent resident of Teekoy Panchayat wherein the shop is situated. Therefore, the order passed by the 4th respondent was set W.P.(C)No.4486 OF2009:

2. : aside and the matter is remitted for fresh decision by the 3rd respondent. Ext.P4 is the consequential order issued by the 3rd respondent. While evaluating the comparative merits of both the candidates, it was categorically found that the

petitioner is a resident of Teekoy Panchayat in house No.131 of Ward No.IV and the distance between his house and the shop is only 1 km. whereas with respect to the 6th respondent it was found that he is a resident of Thalanadu Panchayat. Hence it is found that the petitioner is entitled to be appointed as licensee and it was ordered accordingly. Based on Ext.P4, the licence was allotted to the petitioner and he is conducting the shop.

2. The 6th respondent filed appeal against Ext.P4 before the 3rd respondent. In Ext.P5 order the decision taken by the 4th respondent in Ext.P4 was set aside. The 4th respondent was directed to issue fresh notification inviting application for appointment of permanent licensee with respect to the shop in question. Cryptic finding contained in Ext.P5 order is that, on examination of documents produced by the 6th respondent it was revealed that names of both the petitioner and the 6th respondent finds place in the voters list of Thalanadu Panchayat. But it is to be noticed that Ext.P5 proceedings does not describe any details W.P.(C)No.4486 OF2009:

3. : contained in the voters list, nor it does not make any discussion with respect to veracity of documents produced by the petitioner before the 4th respondent in order to substantiate that he is a resident of house No.131 in Ward No.IV of Teekoy Panchayat. However, aggrieved by Ext.P5 the petitioner preferred a revision petition before the 2nd respondent. But the 2nd respondent in Ext.P6 proceedings had confirmed Ext.P5 order, despite the fact that the petitioner had produced Exts.P2(a) and P2(b) Residential Certificates issued from the Panchayat and the Village Office, certifying that he is a resident within the limits of Teekoy Grama Panchayat.

3. A further revision filed by the petitioner before the 5th respondent was also disposed of through Ext.P9 confirming Exts.P5 and P6 orders, stating that the file contains contradictory documents to show that both the petitioner as well as the 6th respondent are residents of both Teekoy Panchayat and Thalanadu Panchayat. It is challenging Exts.P5, P6 and P9, this writ petition is filed.

4. Eventhough the 2nd respondent had filed counter affidavit, nothing is mentioned in detail about the dispute relating to residential status of the petitioner and the 6th

respondent. It is only mentioned that W.P.(C)No.4486 OF2009:

4. : mere ownership of a property is not sufficient. But the applicant should be a permanent resident of the locality which is interpreted by this Court as within the same Panchayat.

5. Questions to be decided as to whether Ext.P5 appellate order as well as Exts.P6 and P9 orders passed by the revisional authorities are sustainable or not based on the legal and factual aspects. The 4th respondent being the original authority competent to grant the license, had categorically found that the petitioner is a resident of house No.131 in Ward No.IV of Teekoy Grama Panchayat. The above aspect was fortified through Exts.P2(a) and P2(b) residential certificates issued by the Secretary of the Grama Panchayat and the Village Officer concerned. The 4th respondent found that the 6th respondent is a resident of Thalanadu Panchayat. The appellate authority had reversed such findings without any detailed discussion observing that the name of the petitioner and the 6th respondent were included in the voters list of Thalanadu Grama Panchayat. No effort was made to verify as to whether the petitioner is residing in the house mentioned in Exts.P2(a) and P2(b) at the time of Ext.P1 notification. In other words, the appellate authority had not mentioned any reasoning to discard the W.P.(C)No.4486 OF2009:

5. : residential certificates upon which the original authority had placed reliance. Respondents 1 and 2, while considering the respective revision petitions, have also failed to advert to the above aspects. There is no justification in cancelling the grant of license merely saying that there are contradictory documents available in the records with respect to the status of residence of both the applicants. Further, there was no narration at all about any details contained in the voter's list allegedly produced. No doubt was seen taken to verify the currancy of the list. Nothing is contended or proved to show that the petitioner is not residing in the house mentioned in the residential certificates produced. Hence there was no justification at all in directing renotification inviting fresh applications in the matter, especially when it was not found that the petitioner is not a resident of Teekoy Panchayat and he is not eligible to apply.

6. Despite service of notice from this Court, the 6th respondent has not chosen to enter appearance or to contest the matter. For the reasons discussed in the foregoing paragraphs, this Court is of the considered opinion that the appellate authority as well as the revisional authorities have not exercised their jurisdiction in a proper and legal W.P.(C)No.4486 OF2009:

6. : manner. The findings based on which the decision of the original authority was reversed, has no basis either on legal aspects or on the factual matrix. Under the above mentioned circumstances, this writ petition is allowed and Exts.P5, P6 and P9 are hereby quashed. The petitioner is declared as entitled to continue as licensee of the shop on the basis of Ext.P4 order. C.K.ABDUL REHIM, Judge jes

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