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T Ramesh Vs. The Commissioner

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Court : Karnataka

Decided On : Sep-04-2014

Judge : A.N.Venugopala Gowda

Appeal No. : WP 5264/2014

Appellant : T Ramesh

Respondent : The Commissioner

Judgement :

1 IN THE HIGH COURT OF KARNATAKA AT BANGALORE DATED THIS THE4H DAY OF SEPTEMBER, 2014 B E F O R E THE HONBLE MR. JUSTICE A.N. VENUGOPALA GOWDA WRIT PETITION NO.5264/2014 (GM-PDS) C/W WRIT PETITION NO.7073/2014 (GM-EC) IN W.P.NO.5264/2014 BETWEEN: T. RAMESH S/O THIMMAPPA, AGED ABOUT31YEARS, R/O HOSAKOTE, MOLAKALMUR TALUK, CHITRADURGA DISTRICT. ... PETITIONER (BY SRI S.C. VIJAYA KUMAR, ADV.) AND:

1. THE COMMISSIONER FOOD AND CIVIL SUPPLIES DEPARTMENT, CUNNINGHAM ROAD, BANGALORE - 560 001.

2. THE DEPUTY COMMISSIONER CHITRADURGA DISTRICT, CHITRADURGA - 577 501.

3. 4.

5. 2 THE THASILDAR MOLAKALMUR TALUK, MOLAKALMUR CHITRADURGA DISTRICT - 577 528. THE HEAD QUARTER ASSISTANT (HQA) OFFICE OF THE COMMISSIONER FOR FOOD AND CIVIL SUPPLIES, CUNNINGHAM ROAD, BANGALORE - 560 001. M.T. RANGAPPA S/O MECHEERI THIPPANNA, AGED ABOUT39YEARS, R/O HOSAKOTE MOLAKALMUR TALUK CHITRADURGA DISTRICT - 577 528. ... RESPONDENTS (BY SRI H.B. MAHESH, HCGP FOR R1 to R4; SRI H.C. SHIVARAMU, ADV. FOR R5) W.P.NO.5264/2014 IS FILED UNDER ARTICLES226AND227OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR THE RECORDS & QUASH THE IMPUGNED

ORDER
PASSED BY THE1T RESPONDENT IN CFS.APPEAL NO.87/2013-14 DATED0401.2014, AS PER ANNEXURE-E AND THE

ORDER
PASSED BY THE2D RESPONDENT DATED811.11.2013 AS PER ANNEXURE-C BY ISSUING WRIT OF CERTIORARI. IN W.P.NO.7073/2014 BETWEEN: M.T. RANGAPPA AGED ABOUT39YEARS, S/O MAKRI THIPPANA, RESIDENT OF HOSAKOTE VILLAGE MOLAKALMUR TALUK CHITRADURGA DISTRICT. ... PETITIONER (BY SRI H.C. SHIVARAMU, ADV.) 3 AND:

1. THE COMMISSIONER FOR FOOD AND CIVIL SUPPLIES, MARKETING FEDERATION BUILDING, CUNNINGHAM ROAD, BANGALORE - 560 052.

2.

3.

4. THE DEPUTY COMMISSIONER CHITRADURGA DISTRICT, CHITRADURGA - 577 501. THE THASILDAR MOLAKALMUR TALUK, MOLAKALMUR CHITRADURGA DISTRICT - 577 501. T. RAMESH S/O THIMMAPPA, AGED ABOUT32YEARS, RESIDENT OF HOSAKOTE VILLAGE MOLAKALMUR TALUK, CHITRADURGA DISTRICT - 577 501. ... RESPONDENTS (BY SRI H.B. MAHESH, HCGP FOR R1 to R3; SRI S.C. VIJAYA KUMAR, ADV. FOR R4)

W.P.NO.7073/2014 IS FILED UNDER ARTICLES226AND227OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED

ORDER

DATED0401.2014 PASSED BY THE1T RESPONDENT AS AT ANNEXURE-H INSOFAR AS DIRECTING THE HEAD QUARTERS ASSISTANT, FOOD & CIVIL SUPPLIES DEPARTMENT TO TAKE STEPS TO FILE REVISION PETITION UNDER CLAUSE20OF THE KEC (PDS) CONTROL

ORDER

, 1992 BEFORE THE SECRETARY, GOVERNMENT OF KARNATAKA, FOOD & CIVIL SUPPLIES DEPARTMENT, BANGALORE. THESE PETITIONS COMING ON FOR PRELIMINARY HEARING IN B GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

4.

ORDER

The petitioner in W.P.No.5264/2014 is a resident of Hoskote Village, Molakalmuru Taluk, Chitradurga District. He was a card holder of a Fair Price Depot run by the petitioner in W.P.No.7073/2014. Authorisation issued to the petitioner in W.P.No.7073/2014, to run the said fair price depot, was suspended on 01.12.2009. However, the said order was revoked on 26.06.2012, by imposing penalty of `5,000/-. Feeling aggrieved, Appeal No.48/12- 13 was filed by the petitioner in W.P.No.5264/2014 and the same was allowed on 10.05.2013 and the case was remanded to the Deputy Commissioner, Chitradurga District. The said Authority having passed an order on 11.11.2013, revoking the suspension of authorisation, Appeal No.87/13-14 was filed. The said appeal having been rejected on 04.01.2014 as not maintainable, W.P.No.5264/2014 was filed on 30.01.2014, to quash the order dated 11.11.2013 passed by the Authorised Authority and also the order dated 04.01.2014 passed by the Appellate Authority. 5 2. The Appellate Authority, while rejecting the appeal, vide order dated 04.01.2014, having made certain observations and directed the Head Quarters Assistant, Food and Civil Supplies Department, to submit a proposal, under Clause 20 of the Karnataka Essential Commodities (Public Distribution System) Control Order, 1992 (for short

the Control Order), to the Government for consideration, the Authorisation Holder - Sri M.T.Rangappa, has filed W.P.No.7073/2014, to quash the said direction, which being relevant is reproduced hereunder: v Pgtz U PlP CUv U () AiAvt Dz 1992g P 20gAi Pgz g j iq Ai Pgz PAizU, Dg UjP ggd ES, AUg EjU DAiPg PAz P AiPg, Dg EjU Dzz. CzgAv UjP ggd ES AUg EjU Dzz. CzgAv EjU Dzz. EjU Dzz. CzgAv CzgAv Pgt EvxrVz Pgt EvxrVz.... Pgt EvxrVz Pgt EvxrVz 3. Heard the learned advocates on both sides and perused the writ record.

4. An appeal under Clause 17 of the Control Order could be filed by an aggrieved person within 30 days 6 from the date of the receipt of the order, if he is aggrieved by the order of the Authorised Authority, refusing to issue or renew the authorisation or canceling or suspending the authorisation or forfeiting the security deposited by the Authorised Dealer.

5. Clause 20 of the Control Order authorises the State Government to call for and examine the record of any enquiry or proceedings of any Officer exercising or failing to exercise the powers under the Control Order. Examination of the record of any enquiry or proceedings by the Government can be suo motu or upon an application made by any aggrieved person.

6. In the background of the facts and the provisions, noticed supra, the points for consideration are:

1. Whether the Appellate Authority is justified in rejecting the appeal filed by a card holder, as against an order revoking suspension of authorisation?.

2. Whether the Appellate Authority is justified in directing the Head Quarters Assistant to submit a proposal, under Clause 20 of the Control Order to the Government?. 7 7. Certain facts not in dispute and which has bearing on the points for determination as noticed supra, are that, Sri T.Ramesh - petitioner in W.P.No.5264/2014 is a card holder of a fair price depot run by M.T.Rangappa, the petitioner in W.P.No.7073/2014. Authorisation issued to Sri M.T.Rangappa was suspended on 01.12.2009. Order of suspension having been revoked on 26.06.2012, was questioned by Sri T. Ramesh, in Appeal No.48/12-13. Appeal was allowed on 10.05.2013 and the case was remanded to the Authorised

Authority for consideration and decision afresh. Authorised Authority passed an order on 11.11.2013, revoking the suspension of authorisation, which according to Sri T.Ramesh, is one without conducting proper enquiry in terms of the order passed on 07.07.2012 in Appeal No.48/12-13. Assailing the said order, Appeal No.87/13-14 was filed and the order dated 04.01.2014, impugned in both these writ petitions was passed. 8 8. Reading of Clause 17 of the Control Order makes clear that an appeal could be filed within 30 days from the date of the receipt of the order by a person aggrieved by the order of Authorised Authority refusing to issue or renew authorisation or cancelling or suspending the authorisation or forfeiting the security deposited by the authorized dealer. Thus, Clause 17 can be invoked only by a person who had the authorisation. Clause 17 being specific, cannot be invoked by any other person. Petitioner in W.P.No.5264/2014, being not a person falling within the meaning of an aggrieved person as appearing in Clause 17 of the Control Order, the Appellate Authority is justified in rejecting Appeal No.87/13-14, as not maintainable.

9. Clause 20 of the Control order being relevant is reproduced hereunder: 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 9 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. From a reading of the above, it is clear that the words an aggrieved person appearing in Clause 20 is not confined to the words any person aggrieved appearing in Clause 17. Clause 17 can be invoked only by an authorisation holder, if he is aggrieved by any of the eventualities shown therein. The same is not the case with an aggrieved person as appearing in Clause 20. An aggrieved person appearing in Clause 20 is wide and can be a card holder, rival applicant, rival fair price shop holder, etc. The Government may suo motu or on an application made by an aggrieved person has the power to call for and examine the record at any

time, concerning the exercise of powers under the Control Order, by any officer/s, in matters relating to suspension or cancellation 10 of authorisation/s issued, for the purpose of satisfying itself as to the regularity or the propriety of the decision or order and as to the regularity of the proceedings of the officer/s and to pass such order as it thinks fit, by affording reasonable opportunity of being heard to a person, who may be adversely affected by such action.

10. The Appellate Authority having held the appeal filed by the card holder as not maintainable, has exceeded in his jurisdiction by directing the Head Quarters Assistant, to submit a proposal under Clause 20 to the Government, to exercise its powers. What cannot be done directly, cannot be done indirectly. The power to call for and examine the record by the Government may be exercised suo motu or on an application made to it by an aggrieved person. The Appellate Authority by directing the Head Quarters Assistant, has virtually donned the role of an aggrieved person which is impermissible. A statutory authority cannot travel beyond the powers conferred in the statute. The appeal having been held as not maintainable, 11 the appellant ought to have been set at liberty to avail remedy, if any, in accordance with law. The grievance of authorisation holder i.e., the petitioner in W.P.No.7073/2014, as against the impugned action of the Appellate Authority, extracted in para 2 supra, is well founded. In the result, W.P.No.7073/2014 is allowed and W.P.No.5264/2014 is dismissed. Direction of the Appellate Authority, extracted in para 2 supra is quashed. However, it is open for the petitioner in W.P.No.5264/2014, to make an application to the Government, to call for and examine the record of Authorised Authority, which led to passing of the order dated 11.11.2013. All other contentions of both the parties are left open. No order as to costs. Sd/- JUDGE sac*

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