

**Chandrappa Vs. Zilla Parishad**

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**Court : Karnataka**

**Decided On : Nov-23-1989**

**Reported in : ILR1990KAR1676; 1990(3)KarLJ38**

**Judge : K.A. Swami, J.**

**Acts : Karnataka Essential Commodities Licensing Order, 1986; Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 - Sections 184 and 182(1)(40)**

**Appeal No. : W.P. No. 17980 of 1989**

**Appellant : Chandrappa**

**Respondent : Zilla Parishad**

**Advocate for Def. : K. Sreedhar, HCGP**

**Advocate for Pet/Ap. : A.V. Gangadharappa, Adv.**

**Disposition : Petition dismissed**

**Judgement :**

ORDER

**K.A. Swami, J.**

1. In this petition under Articles 226 and 227 of the Constitution the petitioner has sought for quashing the order dated 25-9-1989 passed by the Chief Secretary, Zilla Parishad, Hassan in No. ZPH/Food/87-89-90. The petitioner has also sought for quashing the order dated 27-9-1989 bearing No. TPC/Food/CR/45/89-90 Annexure-C issued by the Block Development Officer, Arsikere. In addition to this, the petitioner has sought for quashing the show cause notice dated 25-9-1989 bearing No. ZPH/ Food/87-89-90 Annexure-D issued by the Chief Secretary, Zilla Parishad to the petitioner. He has also sought for issue of a Writ in the nature of Mandamus directing the respondents 1 to 3 to forbear from taking any action against the petitioner pursuant to the report submitted by the third respondent pursuant to Annexure-D show cause notice.

2. The petitioner is a retail dealer. He holds a retail dealers licence issued in Form-D under Clause (2) of the Karnataka Essential Commodities Licensing Order, 1986. The licence which is produced as Annexure-A enables him to do the business as a retail dealer in foodgrains, sugar and edible oils. He was granted authorisation under the scheme of the State Government for distribution of fair price commodities to card holders. Under the scheme framed by the State Government for distribution of fair price commodities the authorisation can be granted to only those persons who hold a retail dealers licence issued under the Karnataka Essential Commodities Retail Dealers Licensing Order, 1986. The authorisation is issued on an undertaking given in writing by the person or society to whom authorisation is granted.

3. As per the report received by the 2nd respondent from the 3rd respondent, certain, irregularities were noticed in the distribution of fair price commodities by the petitioner. Therefore, the authorisation granted to him for distribution of fair price commodities was suspended by the impugned order dated 25-9-1989. As a result of suspension of the authorisation the fair price commodities could not be supplied to the petitioner and at the same time the supply of the fair price commodities to the various card holders who were assigned to the shop of the petitioner could not be withheld; therefore, the Block Development Officer, Arsikere who is authorised to deal with the distribution of fair price commodities directed that temporarily the distribution of fair price commodities to the card

holders who were assigned to the petitioner shop should be made through one Sri Jagadeesh Fair Price Shop, Habbanaghatta by the order dated 27-9-1989. Therefore, a show cause notice dated 25-9-1989 (Annexure-D) was issued to the petitioner to show cause as to why the authorisation should not be cancelled for the reasons stated in the show cause notice. It is the validity of these orders that is challenged in this Writ Petition.

4. It is contended on behalf of the petitioner that the State Government cannot at all delegate the function of distribution of fair price commodities to Zilla Parishad; that even otherwise there is no such delegation made by the State Government to Zilla Parishad; that even the Chief Secretary, Zilla Parishad is not authorised by the Zilla Parishad to deal with the authorisation granted to the petitioner; that the action taken by the Zilla Parishad amounts to suspension of the retail dealers licence granted under the Karnataka Essential Commodities Retail Dealers Licensing Order; that the Zilla Parishad is not competent to delegate the functions even if they are delegated by the State Government because a delegate cannot redelegate; that at any rate it is the Deputy Secretary of the Zilla Parishad to whom the power is delegated alone could have dealt with the matter and not the Chief Secretary of the Zilla Parishad.

5. These contentions are refuted by Sri Sreedhar, learned Government Pleader for respondents 1 to 4. The learned Government Pleader has also produced the necessary records.

6. At the outset it may also be stated that the learned Counsel for the petitioner placed reliance on a Decision of this Court in W.Ps.3174/1989 c/w 15922/89 and other Writ Petitions, S.B. Chnadrsekhar and ors. v. The Chief Secretary and Anr. DD 13-7-1989.

7. The distribution of fair price commodities in the State of Karnataka is not one of the conditions of the retail dealers licence issued under the Karnataka Essential Commodities Retail Dealers Licensing Order, 1986. A retail dealers licence is issued for doing business in the essential commodities such as food grains, sugar, edible oils etc., as mentioned in the Essential Commodities Licensing Order, 1986 to anyone who fulfills the conditions laid in the Licensing Order, 1986. It is not the

law and the scheme of the State Government relating to distribution of fair price-commodities, also does not contemplate that every retail dealer holding retail dealer licence is entitled to be granted authorisation to distribute fair price commodities to card holders. A citizen has a fundamental right to carry on a trade or business, but he has no fundamental right either to insist upon the Government doing business with him, or to enter into contractual relations with the Government.

8. Cancellation or suspension of the authorisation to distribute fair price commodities to card holders has nothing to do with the retail dealers licence. It does not also in any manner affect the retail dealers licence issued under the Karnataka Essential Commodities Retail Dealers Licence Order, 1986. The authority who is entitled to issue retail dealers licence also has nothing to do with the distribution of or grant of authorisation for distribution of fair price commodities. A Division Bench of this Court had an occasion to consider the scheme of distribution of fair price commodities in MAHADESHWARA STORES v. STATE OF KARNATAKA AND ORS., 1983(2) KLJ 201. It is that scheme which is continued and it is in operation in the State even to this day. It has been held by a Division Bench that the distribution of fair price commodities is done under an agreement between the State Government and the person who is authorised to distribute the fair price commodities. After the coming into force of the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayat Act, 1983 (for short 'Karnataka Act 20 of 1985') the State Government has transferred the function of distribution of fair price commodities to Zilla Parishads. Therefore, in the matter of distribution of fair price commodities Zilla Parishads have taken the place of the State Government. The Division Bench has also held that if there is any cancellation, suspension of the authorisation or any action is taken for contravention of the conditions of the authorisation, the remedy to the aggrieved is by way of Civil Suit and not by way of a petition under Article 226 of the Constitution. The aforesaid case still holds the field because it has not been over-ruled by any larger Bench of this Court. When a Division Bench decision holds the field on the subject in question, a Single Judge is bound by that decision. (See AMRESHAPPA v. STATE OF KARNATAKA AND ORS., 1985(2) KLJ 228 However, the learned Counsel contended that In S.B. Chandrasekhar's case the

decision in Mahadeshwara Stores has also been considered and it has been held that the order cancelling the authorisation or affecting the authorisation is justiciable in a petition under Article 226 of the Constitution. In this regard it is relevant to notice that this very decision came to be cited before me in K.S. PRAKASH AND ANR. v. STATE OF KARNATAKA AND ANR, W.Ps. Nos. 18320 and 18321 of 1998 DD 10-8-1989. With reference to the decision in Mahadeshwara Stores and the decision in W.P. 3174/1989 it has been held thus:

'A Division Bench of this Court in Mahadeshwara Stores v. State of Karnataka & others., reported in 1983(2) KLJ 201 had an occasion to consider the scope of the scheme and exercise of jurisdiction under Article 226 of the Constitution in such matters. The Division Bench held that, as the matter related to a contract and therefore the aggrieved parties have to seek remedy in a Civil Court in a properly instituted suit, accordingly the Division Bench held that it was not a case for interference under Article 226 of the Constitution.

3. However, Sri Rangaraju, learned Counsel for the petitioner has placed reliance on a Judgment of learned Single Judge in G.K. Ramu v. Zilla Parishad, Mandya by its Chief Secretary and others, W.P. No. 3174/1989 and connected petitions disposed of on 13-7-1989 and contends that the second respondent has no jurisdiction to deal with the matter. When once the matter pertains to contract, whether the authority who has taken action in the matter has competence or not, is also a matter to be agitated by the aggrieved party in an appropriate suit. Therefore, I am of the view that the Division Bench decision in Maheshwara Stores case still governs the case. Hence the petitions are dismissed.

All the contentions are left open. It is open to the petitioners to seek such reliefs as are permissible in law in an appropriate suit.'

Therefore, the contention based on the decision in W.P.3174/1989 in the light of a Division Bench decision and in view of the fact that the authorisation has nothing to do with the retail dealers licence it is not possible to hold that the said decision forms a precedent, and the aforesaid decision of a Division Bench in Mahadeshwara Store's case is not applicable to the case on hand.

9. I now take up the question as to whether there has been a transfer of a function of distribution of fair price commodities by the State Government to the Zilla Parishad. Before considering this question another contention raised by the learned Counsel for the petitioner that it is not at all open to the State Government to delegate this function can only be stated to be rejected. Any function of the State Government which can be performed by the Zilla Parishad as per the provisions of the Karnataka Act 20 of 1985, can be transferred or delegated or entrusted to Zilla Parishads. It is pursuant to these provisions contained in Section 184 of the Act, the State Government has entrusted some of its functions by the Government Order No. FTD 148 DRA 86 dated 26th March 1987. The distribution of fair price commodities is one of them. That Zilla Parishad can undertake such a function is also evident from Section 182(1)(XV) of the Act. Therefore, the contention that there is no delegation or entrustment of the function of distribution of fair price commodities to the Zilla Parishad is a misconceived contention.

10. The next contention that there is no delegation of powers and functions relating to grant of authorisation and distribution of fair price commodities to the Chief Secretary is also not well founded. The Zilla Parishad, Hassan has published an order bearing No.GPH Food/86-87-88 dated 18th August 1989 in the Karnataka Gazette of 31st August 1989 delegating certain of its powers and functions to the Chief Secretary as well as to the Deputy Secretary of the Zilla Parishad and also to the Block Development Officers. As per the said Notification, it is the Chief Secretary and the Deputy Secretary of the Zilla Parishad who are empowered to deal with the distribution of fair price commodities and grant of authorisation. The learned Counsel for the petitioner however tried to contend that under the aforesaid Notification the Zilla Parishad has delegated the power to the Deputy Secretary of the Zilla Parishad and not to the Chief Secretary of the Zilla Parishad. It is not possible to read the Notification in the manner in which the learned Counsel wants the Court to read. Paragraphs 3 and 4 of the aforesaid order dated 18-8-1989 read together empower the Chief Secretary, Zilla Parishad to exercise the power and perform the functions relating to distribution of fair price commodities.

11. The next question for consideration is whether the impugned orders are issued by the Chief Secretary. Annexure-B is Issued by and from the office of the Chief Secretary. It is signed on behalf of the Chief, Secretary. In issuing the orders on the administrative side it is neither uncommon nor unusual that in the normal course the orders are signed on behalf of the superior authorities by the inferior authorities. It is permissible. This does not mean that the order is issued by the inferior authority and not by the superior authority on whose behalf the order is issued. In addition to this, Sri Sreedhar, learned Government Pleader has brought to the notice of the Court that the original order Annexure-B has been approved by the Chief Secretary. As far as Annexure-C is concerned the B.D.O. has been empowered under the aforesaid order of the Zilla Parishad dated 18th August 1989 regarding distribution of fair price commodities. He has taken only consequential step in the matter in the light of the suspension of the authorisation granted to the petitioner. The third order is only a show cause notice dated 25-9-1989 issued by the Chief Secretary though signed by another Officer for and on behalf of the Chief Secretary but the original of which is approved by the Chief Secretary. This is only a show cause notice, against which it is open to the petitioner to file his objections and show cause as to why the authorisation granted to him should not be cancelled. Therefore, it is not possible to interfere with the show cause notice Annexure-D against which the petitioner can put forth his say and thereafter the Chief Secretary has to decide the question as to whether the authorisation should or should not be cancelled.

12. Thus, It becomes clear from the aforesaid discussion that the petitioner has approached the Court at the stage when the authorisation is suspended. Nothing has yet been decided as to whether the authorisation granted to the petitioner, should or should not be cancelled and the security amount should or should not be forfeited.

For the reasons stated above the petition has to fail and the same is dismissed with costs.

Advocate's fee Rs. 750/- to be paid to respondents 1 to 4.

