

Nirmala Devi and ors. Vs. State of Raj. and ors.

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Court : Rajasthan

Decided On : Apr-21-2010

Judge : Vineet Kothari, J.

Appellant : Nirmala Devi and ors.

Respondent : State of Raj. and ors.

Disposition : Petition dismissed

Judgement :

ORDER

Vineet Kothari, J.

1. Heard learned Counsel.

2. By this petition, the petitioner has challenged Annexure 2 Circular dated 22.01.2010 issued by Principal Secretary of Food and Civil Supplies Department of Government of Rajasthan whereby in pursuance of the Budget announcements made by the Hon'ble Chief Minister of the State in the Budget for the year 2009-10, the State Principal Secretary has laid down certain guidelines for allotment of fair price shops.

3. Learned Counsel for the petitioner, Mr. P.P. Choudhary submits that license was given to the petitioners under the Rajasthan Food Grains and Other Essential

Articles (Regulation & Distribution) Order, 1976 vide Annexure 1 by the District Collector (supplies) Sriganaganagar vide No. 747/2008 for the area of Gram Panchayat Dhaba Jhallar, Tehsil Suratgarh and similar licenses were given to other two petitioners also, whereas by the impugned Circular Annexure 2 dated 22.01.2010 the State Principal Secretary vide Clause 2 of the said circular has directed that the fair price shops allotted to 'Women Co-operative Societies and Lamps' which are already allotted such shops shall be maintained and in case of any vacancy for such allotment, it will be filled up by giving preference to such 'Women Co-operative Societies and Lamps'. In case, there is no vacancy the Government would make effort for creating new fair price shops or otherwise, the area of existing shops allotted by the Government will be divided into half portions and such remaining portions will be allotted to such new 'Women Co-operative Societies and Lamps'.

4. Learned Counsel submits that this Annexure 2 order of Principal Secretary dated 22.01.2010 amounts to an administrative order and is contrary to Rule 3 of the aforesaid Food Grains order of 1976 which reads as under:

3. Issue of Authorisation - (1) The Collector or any other officer authorized by the State Government may issue an authorization to any person being an authorized wholesaler/fair price shopkeeper to obtain and supply foodgrains and other Essential Articles in the area specified therein.

(2) No person other than an authorization holder shall sell any of the foodgrains or any other essential articles supplied by the Government for distribution under this Order or any other Order.

(3) Every application for the authorization shall be submitted to the Collector in Form 'A'

(4) Every authorization issued under this Order shall be in Form 'B'

Explanation :On the commencement of this Order, every person, who was appointed or approved by the Government, or Collector or any other officer authorized in this behalf as authorized wholesaler or authorized fair price

shopkeeper on any other similar designation and whose appointment or approval was in force immediately before such commencement shall be deemed to be an authorized wholesaler/Fair Price Shopkeeper for the purpose of this Order upto a period of 3 months from the date of commencement of this Order, or earlier, in case authorization is obtained under this clause.

5. Learned Counsel Mr. P.P. Choudhary therefore submitted that the said administrative circular/order of the Principal Secretary deserves to be quashed being in conflict with Rule 3 of the Order of 1976 as under the said Order, under Rule 8, the Competent Authority, namely, Collector (supplies) only has a power to suspend or cancel the authorization license upon violation of the condition found to have been committed by the licensee.

6. I have heard learned Counsel at some length and given my consideration to the submissions at the bar.

7. It would be appropriate to reproduce condition No. 13 of the license in favour of the petitioner produced as Annexure 1 before this Court. The said condition No. 13, upon translation in English in substance would mean that mere grant of the said license to the licensee to run such fair price foodgrains shop allotted by the State Government will not confer any right on such licensee to continue the said license endlessly or without any period and further the Collector in his own wisdom, without giving or assigning reason, can cancel either such allotment or can also make any amendment or modification in the same and the licensee shall not be entitled to claim any damages or compensation on account of such cancellation of license or amendment or modification therein.

8. In view of the aforesaid Clause 13 of the license which conditions undoubtedly has been accepted by the petitioner licensee while taking the said license for fair price shop under a special category, prohibits the petitioner from raising any grievance in this regard or challenge the impugned modification for which guidelines have been issued by the Principal Secretary of the State Government by the Circular Annexure 2 dated 22.01.2010. The said Circular dated 22.1.2010 in the considered opinion of this Court is neither an administrative order qua the petitioner nor an other adverse order has been passed specifically in the case of

the petitioner giving any cause of action to the petitioner to approach this Court at this stage.

9. The said Circular clearly and merely reiterates the and explaining the same, certain guidelines have been laid down by the Principal Secretary for the purposes for being implemented by the Competent Authority namely the Collector (Supply). As it is, the said Circular permits division of area or market under a license given to the present licensee and in case of emerging needs, if the State Government has considered it appropriate to divide the market into half in cases of particular areas where new shops cannot be created, in the opinion of this Court, no valid exception to the same can be taken. The words used in Rule 3 of Order 1976 'that area specified therein' in Sub-rule (1) of Rule 3 of 1976 Order does not provide for an iron clad boundary and the area given in license to the petitioner or other similarly situated persons and the petitioners or licensees cannot claim endlessly to continue to have right to sell foodgrains in fair prices shop in the specified area of their license once so specified, without any modification or amendment. Rule 3 nowhere prohibits in negative terms any such amendment or modification of the area. The power to suspend and cancel the license under Rule 8 of Order of 1976 operates in entirely different field and applies in different contingencies. If any default or breach is committed by the licensee, then Rule 8 can be invoked even to suspend or cancel the license. Without invoking Rule 8 also which does not apply in the present facts and circumstances of the case, the State Government is at liberty to modify and amend the boundaries of the market area and no amendment in the Order of 1976 itself is required for this purposes, as contended by the learned Counsel for the petitioner.

10. In the considered opinion of this Court, the petitioner is not entitled to challenge the guidelines contained in Circular Annexure 2 dated 22.01.2010 before this Court being bound by the condition of license itself particularly Clause 13 thereof. Even otherwise, this Court does not find any arbitrariness, lack of jurisdiction or patent illegality in the said Circular. The object and nexus behind such Circular is clear and unassailable.

11. Consequently, the writ petition being devoid of merit is hereby dismissed. Copy be sent to the respondents.

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