

(Rajendra Shrivastava Vs. State of M.P. & Others)

12.06.2017

Shri Sanjay Bahirani, Advocate for the petitioner.

Shri Praveen Newaskar, Govt. Advocate for the respondent/State.

I.A. No. 3785/17, an application for urgent hearing during summer vacation is taken up, considered and allowed for reasons mentioned therein.

1. In this petition filed under Article 226/227 of the Constitution of India, petitioner has assailed the order Annexure P-1 dated 27.04.2017 passed by the SDO who is the Shop Allotment Authority as defined under M.P. Public Distribution Order 2015 directing the society in question to replace the petitioner who is the salesman of the concerned Fair Price Shop managed by the society.

2. Earlier petitioner had been issued a show cause notice vide P-3 dated 21.04.2017 intimating various irregularities in functioning of the Fair Price Shop. On filing reply by the petitioner vide P-4, the impugned order has been passed by treating the reply to be unsatisfactory.

3. Learned counsel for the petitioner submits that the order impugned is bereft of jurisdiction, as no authority lies with the Shop Allotment Authority under the M.P. Public Distribution System (Control) Order 2015 (Control Order 2015 for brevity) to remove salesman of the society managing the Fair Price Shop.

4. The order impugned appears to have been passed under the provisions of Clause 16(7) of Control Order 2015 which for ready reference and convenience is reproduced below:

16(7) Shop Allotment Authority may order, in writing to institution to remove the salesperson of fair price shop,

if found guilty, from duties of distribution of commodities of Public Distribution System. Such order shall be binding on institution and the said salesperson shall not be appointed as salesperson in any other fair price shop.

4.1 The above said provision empowers the Shop Allotment Authority to order for removal of salesman of the Fair Price Shop by giving an appropriate direction to the institution(the society) which manages the fair price shop, in case the said salesman is found to be guilty or is found to be involved in dereliction of his duties of distribution of essential commodities under the Public Distribution System.

5. The impugned order herein appears to be passed by the SDO who is the competent Shop Allotment Authority under Clause 16(7) of the Control Order 2015 by directing the Society who is the employer of the petitioner to replace the petitioner and appoint new Salesman so that the complaints received by public regarding irregularities in distribution of essential commodities get eliminated.

6. This Court fails to see as to how the order Annexure P-1 dated 27.04.2017 passed by the SDO is bereft of jurisdiction. In fact, the said order directs the employer society to replace the petitioner with another salesman. In fact the said direction does not in specific terms orders for removal of the petitioner from employment. The order seems to have been passed in public interest for betterment of the public distribution system.

7. Learned counsel for the petitioner submits that power under Clause 16(7) of the Control Order 2015 empowers the Shop Allotment Authority to merely pass an order of removal. It is urged that the expression "removal" does not include the

concept of replacing the existing incumbent with another salesman. It is further submitted that the vires of 2015 Control Order have been assailed in various petitions which are pending adjudication before this Court.

8. It is nobodies case that 2015 Order has been stayed and therefore the provisions of the said order can very well be invoked by the competent authority and therefore the impugned order appears to have been passed by the competent authority i.e. the Shop Allotment Authority, SDO as per Clause 2(1)(j) of the 2015 Control Order.

9. However, the other submission that the term 'removal' which finds place in Clause 16(7) of the Control Order 2015 does not include the power of replacing the present incumbent with a new one deserves consideration.

10. True it is that the power of replacing the present incumbent on the post of salesman with a new one is not vested with the Shop Allotment Authority and certainly does not fall within the definition of "removal".

11. Moreso, as submitted by learned counsel for the petitioner that the show cause notice Annexure P-3 was issued under Clause 16(3) of the 2015 Control Order did not propose replacing of the petitioner as one of the consequences, if reply to the show cause notice is found to be unsatisfactory. This submission deserves rejection at the very outset since the action impugned is not of removal as contemplated by Clause 16(7) of the Control Order 2015, but of mere replacement.

12. Moreso, as regards the above contentions that expression "removal" not encompassing the concept of replacing is concerned, need not detain this Court any further in view of the generic powers vested with the Shop Allotment Authority under

Clause 18 which for ready reference and convenience is reproduced below:

18. Power to give necessary direction- The Commissioner, Collector, Shop Allotment Authority may issue directions within their respective jurisdiction to ensure the planned distribution of essential commodities under the targeted public distribution system and the fair price shop/cooperative society/institution/body/group/agency are duty bound to follow such directions.

12.1 A bare perusal of Clause 18 discloses that the Commissioner, Collector and also the Shop Allotment Authority(the SDO) may issue directions within their respective territorial jurisdiction to ensure planned distribution of essential commodities under the targeted distribution system and the fair price shop/institution/body/group/agency are duty bound to comply with the same. Thus, the said three authorities including the Shop Allotment Authority are conferred with powers of generic nature to ensure planned public distribution of essential commodities which in other terms means to ensure achieving the object for which the Control Order 2015 is framed. If a Shop Allotment Authority, suo mottu or on the basis of certain complaints by consumers finds that the distribution of essential commodities is not being made or is deficiently been made or is being made against the provisions of the Control Order 2015, then it can very well direct the society which manages the Fair Price Shop to replace the salesman or to take action against him in accordance with law.

13. It goes without saying that if this kind of generic power under Clause 18 is exercised by Shop Allotment Authority

directing the society(employer of salesman) to replace the incumbent salesman, then it is mandatory upon the society to replace the salesman. Whether the society takes disciplinary action against the salesman or not is for the society to decide. If the society chooses to initiate any disciplinary action, then needless to emphasize that society must follow the due process of law before passing any order having adverse consequence of civil nature against the incumbent Salesman.

14. In view of above, this Court declines interference in the matter and dismisses the present petition with liberty to the petitioner to avail remedy of appeal before the Collector against the order Annexure P-1.

15. It is needless to emphasize that if any appeal is filed before the said appellate authority, then the same shall be decided as expeditiously as possible in accordance with law.

(Sheel Nagu)
Vacation Judge

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