

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30<sup>TH</sup> DAY OF NOVEMBER, 2022

**R**

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPPASANNA

WRIT PETITION No.19575 OF 2022 (GM - PDS)

**BETWEEN:**

SRI MANJUNATH B.,  
S/O BASAVARAJU,  
AGED ABOUT 34 YEARS,  
R/AT NO.126,  
BYRAVESHWARA NAGAR MAIN ROAD,  
NEAR BYRAVESHWARA SAMUDHAYA BHAVANA,  
BYRAVESHWARANAGARA, DODDABIDARAKLLU,  
BENGALURU – 560 073.

... PETITIONER

(BY SRI H.P.GANGESH GOWDA, ADVOCATE)

**AND:**

1. THE PRINCIPAL SECRETARY  
DEPARTMENT OF REVENUE (FOOD),  
M.S.BUILDING,  
DR B.R.AMBEDKAR ROAD,  
BENGALURU – 560 001.
2. THE COMMISSIONER  
DEPARTMENT OF FOOD,  
CIVIL SUPPLIES AND CONSUMER AFFAIRS,  
CUNNINGHAM ROAD,  
BENGALURU – 560 052.

3. THE ADDITIONAL DIRECTOR  
DEPARTMENT OF FOOD,  
CIVIL SUPPLIES AND CONSUMER AFFAIRS,  
CUNNINGHAM ROAD,  
BENGLAURU – 560 052.
4. THE DEPUTY DIRECTOR  
DEPARTMENT OF FOOD,  
CIVIL SUPPLIES AND  
CONSUMER AFFAIRS,  
WEST RANGE,  
NO.338/A, SAHAKARI BUILDING,  
57<sup>TH</sup> 'D' CROSS, III BLOCK,  
RAJAJINAGARA,  
BENGALURU – 560 010.
5. M/S RAJAJINAGAR SASTHA'S  
WOMEN'S ASSOCIATION  
NO.310, GROUND FLOOR,  
3<sup>RD</sup> BLOCK, 59<sup>TH</sup> CROSS,  
RAJAJINAGAR,  
BENGALURU – 560 010  
REP. BY ITS SECRETARY  
SRI.S.LOKESH PRABHU.

... RESPONDENTS

(BY SRI VINOD KUMAR M., AGA FOR R1 TO R4;  
SRI R.B.MRUTHYUNJAYA, ADVOCATE FOR C/R-5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER PASSED BY THE R3 PRA SAM.INR/DRA/24/2021-22 DTD 20.09.2022 CANCELLING THE LICENSE OF THE PETITIONER ANNEXURE-M; CONSEQUENT TO QUASHING THE IMPUGNED ORDER, DIRECT R4 NOT TO INTERFERE WITH THE SUPPLY OF RATION TO THE FAIR PRICE SHOP OF THE PETITIONER.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 18.11.2022, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

**ORDER**

The petitioner is before this Court calling in question order dated 20<sup>th</sup> September 2022 passed by the 3<sup>rd</sup> respondent cancelling the license issued to the petitioner for a fair price shop under the Karnataka Essential Commodities Public Distribution System (Control) Order 2016 ('the Order' for short).

2. Heard Sri H.P.Gangesh Gowda, learned counsel appearing for the petitioner, Sri M.Vinod Kumar, learned Additional Government Advocate appearing for respondents 1 to 4 and Sri R.B. Mruthyunjaya, learned counsel appearing for respondent No.5-caveator.

3. Brief facts that lead the petitioner to this Court in the subject petition, as borne out from the records, are as follows:-

The petitioner claims to be a physically disabled person to the extent of 75% and is entitled to the benefits under the Rights of Persons with Disabilities Act, 2016. Initially, the Karnataka State Food and Civil Supplies Corporation was granting licenses to run fair

price shops in favour of the applicants. The said duty was taken over by the Government. The Government started granting fair price shop licenses. The 4<sup>th</sup> respondent/ Deputy Director of Food, Civil Supplies and Consumer Affairs issued a notification on 10-01-2022 inviting applications from interested citizens to apply for grant of fair price depot in the western range, Bangalore City. In response to the said notification, the petitioner being physically challenged applied seeking allotment of a fair price depot in his favour along with other applicants. On scrutiny of the applications received, a fair price depot was allotted in favour of the petitioner to run at Shivanahalli under the physically challenged quota. Prior to the grant of said license, a report from the Food Inspector was sought and the Food Inspector had recommended approval of allotment of fair price depot in favour of the petitioner, under the physically challenged quota. Accordingly, the competent authority allotted fair price depot in favour of the petitioner under clause 6(1)(b) of the Order.

4. The petitioner then claims to have complied with all the conditions specified by the 4<sup>th</sup> respondent and made investment by

taking premises on rent by entering into an agreement to run fair price depot. The 5<sup>th</sup> respondent herein M/s Rajajinagar Sastha's Women's Association ('the Association' for short) challenges the said grant of allotment in favour of the petitioner before this Court in Writ Petition No.3233 of 2022. This Court by its order dated 7<sup>th</sup> March 2022 permitted the 5<sup>th</sup> respondent to withdraw the petition and file an appeal before the Appellate Authority. Then the 5<sup>th</sup> respondent files appeal before the Appellate Authority. The Appellate Authority, after hearing the parties, sets aside the license granted to the petitioner. The setting aside of license at the instance of the 5<sup>th</sup> respondent is what drives the petitioner to this Court in the subject petition.

5. The learned counsel appearing for the petitioner would contend that the prayer in the appeal was only to restore ration cards that were removed from the 5<sup>th</sup> respondent and hand it over to the petitioner. But the Appellate Authority has set aside the license itself which was not even the prayer that was sought for by the 5<sup>th</sup> respondent.

6. On the other hand, the learned Additional Government Advocate appearing for respondents 1 to 4 would contend that the fight between the 5<sup>th</sup> respondent and the petitioner is with regard to number of cards that they possessed or are being allotted. That today's policy of the State is one nation; one ration. A card holder can take ration month on month basis in any of the fair price depot. He need not go to the depot to which he has been allotted. Therefore, the contention that the 5<sup>th</sup> respondent's cards are taken out and given to the petitioner or vice-versa would hold no water. He would submit that the decision of the Appellate Authority would not affect any person.

7. The learned counsel appearing for the 5<sup>th</sup> respondent would refute the submissions of both the petitioner and the State to contend that the Appellate Authority had heard the matter and comes to conclude that the cards that were lying with the 5<sup>th</sup> respondent were erroneously taken away and given to the petitioner which could not have been done, as it would violate the order of allotment in favour of the 5<sup>th</sup> respondent. He would contend that merely because the petitioner is a candidate who is

physically challenged cannot get the fair price depot on that ground and would submit that the order of the Appellate Authority calls for no interference as it is in consonance with law.

8. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

9. The distribution of cards in terms of allotment of fair price shops is dealt with under the Order. Clause 2(g) of the Order defines a 'Fair Price Depot' to mean, a depot which is authorized to distribute essential commodities under the public distribution system to ration cardholders. Clause 3 deals with issue of authorization; clause 4 deals with issue of application for authorization and clause 5 which is germane for consideration of the *lis* read as follows:-

**"5. Conditions for Eligibility – (1) To be eligible for grant of authorization under clause 3, an institution or person should satisfy the following conditions:**

*(a) should not have been convicted for an offence under the Essential Commodities Act, 1955 nor should a wholesale dealers license or retail dealers license issued to him under any order made under the Essential Commodities Act, 1955 or an authorization issued to him to run a fair price depot have been cancelled;*

*(b) should be in possession of suitable business premises, with sufficient space to store two months stock of the essential commodities, and should have separate space for storing food grains and kerosene.*

*(c) should have sufficient funds in a bank account to purchase two month's stocks requirements.*

*(2) No Authorised Agency shall be eligible for Authorization unless he is capable of Transporting PDS commodities in the vehicles under his disposal well within the time limit imposed in the Authorization or Transit Permits issued to him."*

Clause 5 deals with conditions for eligibility for grant of authorization. Sub-clause (b) of Clause 5 mandates that the applicant should be in possession of suitable business premises, with sufficient space to store two months stock of essential commodities and should have sufficient funds in the Bank to purchase food stock. Clause 6 deals with order of priority for grant of authorization. The priority directs that Stree Shakthi Groups located in the same village or locality where the fair price shop is to be allotted which is recognized by the Women and Child Development Department should be given priority. Clause 11 of the Order reads as follows:



**"11. Assignment of Ration Card:** (1) After sanctioning an authorization to run a fair price depot, the Authorised Authority shall assign to the fair price depot a certain number of ration cards belonging to persons residing near the fair price depot.

(2) The number of ration cards assigned to a fair price depot under sub-clause (1) shall not be less than 500 for a fair price depot in a rural area and not less than 800 for a fair price depot in an urban area.

Provided that the Authorised Authority may, for reasons to be recorded in writing, relax the limit up to 100 cards for a fair price depot in a rural area if the fair price depot is to serve the needs of an isolated settlement or layout where the number of ration cards is below the limit prescribed viz., special areas like tribal hadis/tandas/ gollarahatti etc.

(3) The Authorised Authority may, if he considers it necessary, transfer ration cards from one fair price shop to another:-

- (a) on the request of ration cardholders.
- (b) as a result of reorganization of the jurisdictional area of the shop with permission of Commissioner as a part of well defined parameters.
- (c) if the number of ration cards in a shop, fall below 75% of the number specified under Clause 11(2), thereby making the shop as economically unviable."

A cap on the number of ration cards for a fair price depot is depicted to be not less than 500 for a fair price depot in a rural area and not less than 800 for a fair price depot in an urban area. Relaxation of the limit up to 100 cards in a rural area is permitted. Therefore, the cap in urban area is 800 cards. The petitioner was allotted a fair price depot in Shivanahalli where the 5<sup>th</sup> respondent

is also having a license for a fair price shop, if not next to each other but in the same vicinity. The petitioner is allotted cards by removing 106 cards from the cards of the 5<sup>th</sup> respondent and allotting them to the petitioner so that it would come within the minimum possible under the Order. This action of removal of some cards from the 5<sup>th</sup> respondent and allotting the same to the petitioner is called in question before this Court and this Court permits the 5<sup>th</sup> respondent to approach the Appellate Authority. It is then the 5<sup>th</sup> respondent files an appeal before the Appellate Authority. In the appeal, grounds and prayer of the 5<sup>th</sup> respondent were as follows:

*"8. The respondent has superseded the order ref: CFS/PD/IV/Fair Price Shop/57/2019-2020, dated 7.08.2020, issued by the Commissioner, Department of Food and Civil Supplies and Consumers Affairs, Government of Karnataka, to follow the Rules of 2016, at Sl.NO.3, that new shops should be allotted without any complaint.*

*9. As per Clause 11(2) of the Karnataka Gazette Notification, the number of ration cards assigned to a fair price depot under sub-clause (1) shall not be less than 500 for a fair price depot in a rural area and not less than 800 for a fair price depot in the urban area, but the respondent has removed 201 ration cards out of 571, and only 370 ration cards are retained with the appellant, as such the same is less than 800 cards, as such the order of the respondent is unjust, improper, opposed to rule of law probabilities.*

*10. The appellant has been allotted only 694 cards under various category, and the appellant have already 106 cards*

*shortage to cover the mandatory allotment as per the rules and bye-laws of Food and Civil Supplies as per Gazette Notification ref.NO.FCS 17 RPR 2011(1) Bangalore dated 10-06-2016 and if the respondent removes 201 PHH card, then again fail of shortage of card, in that circumstances the appellant is unable to bear the rent to the shop, electricity, salary to the employee, incidental expenses etc. and to under the fair shop under debt, as such the hardship suffered by the appellant cannot be compensated in any manner, as such the said order needs to be stayed pending disposal of this appeal. Any other grounds shall be urged at the time of arguments.*

*Wherefore, it is humbly prayed that this authority be pleased to stay the removal of the ration cards in respect of the fair shop of the appellant herein and direct the respondent to restore/retain the early status by allowing the appeal, and pass such other relief or relief/s as this Authority deems fit to in favour of the appellant and as against the respondent to meet the ends of justice."*

The contention of the 5<sup>th</sup> respondent in the appeal was that the authorities have removed 201 cards out of 571 and only 370 cards are retained with the 5<sup>th</sup> respondent which is less than 800 cards and it was unjust, improper and contrary to the Order. The prayer of the 5<sup>th</sup> respondent was for restoration of cards which were taken away from the 5<sup>th</sup> respondent and placed to the petitioner. What the Appellate Authority would do is cancel the allotment made in favour of the petitioner. The order of the Appellate Authority dated 20-09-2022 reads as follows:

"ಆದೇಶ"

ಪ್ರ.ಸಂ.:ಐ.ಎನ್.ಆರ್/ಡಿಆರ್ಎ/ಅ/24/2022-23

ದಿನಾಂಕ:20.09.2022

ಪ್ರಸ್ತಾವನೆಯಲ್ಲಿ ವಿವರಿಸಿರುವಂತೆ ಕರ್ನಾಟಕ ಅಗತ್ಯ ವಸ್ತುಗಳ ಸಾರ್ವಜನಿಕ ವಿತರಣಾ ಪದ್ಧತಿ (ನಿಯಂತ್ರಣ) ಆದೇಶ 2016ರ ನಿಯಮ 11(2) ರನ್ವಯ ನಗರ ಪ್ರದೇಶದಲ್ಲಿ ಒಂದು ನ್ಯಾಯಬೆಲೆ ಅಂಗಡಿಗೆ ಕನಿಷ್ಠ 800 ಪಡಿತರ ಚೀಟಿಗಳು ಇರಬೇಕು ಹಾಗೂ ಆಯುಕ್ತರ ಪತ್ರ ದಿನಾಂಕ: 30.12.2019 ಹಾಗೂ 07.08.2020ರಲ್ಲಿ ಹತ್ತಿರದಲ್ಲಿ ಯಾವುದೇ ನ್ಯಾಯಬೆಲೆ ಅಂಗಡಿಗೆ ಇಲ್ಲದಿದ್ದ ಪಕ್ಷದಲ್ಲಿ ಹೊಸ ನ್ಯಾಯಬೆಲೆ ಅಂಗಡಿಗೆ ಮಂಜೂರಾತಿಗೆ ಪ್ರಕಟಣೆ ಹೊರಡಿಸಬೇಕೆಂಬ ಷರತ್ತುಗಳು ಇದ್ದು, ಸದರಿ ಪ್ರಕರಣದಲ್ಲಿ ಸದರಿ ನಿಯಮ ಹಾಗೂ ಷರತ್ತುಗಳ ಉಲ್ಲಂಘನೆಯಾಗಿರುವುದು ಕಂಡು ಬರುತ್ತದೆ. ಅಲ್ಲದೆ ಸದರಿ ನ್ಯಾಯಬೆಲೆ ಅಂಗಡಿಯಿಂದ ಪಡಿತರ ಚೀಟಿಗಳನ್ನು ತೆಗೆದು ಹೊಸದಾಗಿ ಮಂಜೂರು ಮಾಡಿರುವ ಶ್ರೀ ಮಂಜುನಾಥ ಬಿ ನ್ಯಾಯಬೆಲೆ ಅಂಗಡಿಗೆ ನಿಯೋಜಿಸಿದ್ದು, ಸದರಿಯವರು ನ್ಯಾಯಬೆಲೆ ಅಂಗಡಿ ಮಂಜೂರಾತಿಗೆ ಅರ್ಜಿ ಸಲ್ಲಿಸುವ ಸಂದರ್ಭದಲ್ಲಿ ಅಂಗಡಿ ಕರಾಟ ಪತ್ರವನ್ನು ಸಲ್ಲಿಸದೇ ಇರುವುದರಿಂದ ನಿಯಮ 5(1) (ಬಿ) ಸಹ ಉಲ್ಲಂಘನೆಯಾಗಿರುತ್ತದೆ. ಈ ಎಲ್ಲಾ ಕಾರಣಗಳಿಂದ ಉಪ ನಿರ್ದೇಶಕರು, ಪಶ್ಚಿಮ ವಲಯ, ಬೆಂಗಳೂರು ರವರ ಸಂ: ಉನಿ(ಸ)ಡಿಆರ್/ನ್ಯಾ.ಬೆ.ಅಂ/19/2021-22. ದಿನಾಂಕ:18.02.2022ರ ಆದೇಶದನ್ವಯ ಮಂಜೂರು ಮಾಡಿರುವ ಶಿವನಹಳ್ಳಿ ಪ್ರದೇಶದ ಶ್ರೀ ಮಂಜುನಾಥ್ ಬಿ. ನ್ಯಾಯಬೆಲೆ ಅಂಗಡಿಯ ಪ್ರಾಧಿಕರಣವನ್ನು ತಕ್ಷಣದಿಂದ ಜಾರಿಗೆ ಬರುವಂತೆ ರದ್ದುಪಡಿಸಿ ಆದೇಶಿಸಿದೆ.

ತೆರೆದ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ದಿನಾಂಕ:20.09.2022ರಂದು ಉಕ್ತಲೇಖನ ನೀಡಿ, ಬೆರಳಚ್ಚು ಮಾಡಿಸಿ ತಪ್ಪುಗಳನ್ನು ತಿದ್ದುಪಡಿ ಮಾಡಿ ಅನೇಶವನ್ನು ಹೊರಡಿಸಲಾಯಿತು."

(Emphasis added)

The Appellate Authority cancels the allotment itself made in favour of the petitioner which came about on 18-02-2022. If the prayer of the 5<sup>th</sup> respondent before the Appellate Authority is noticed, it was only seeking restoration of cards that were taken away from the hands of the 5<sup>th</sup> respondent and given to the petitioner. But, the Appellate Authority exceeds the brief and sets aside entire allotment made in favour of the petitioner. The license itself is cancelled. That was not the prayer that was sought. Therefore, on

that ground, the order of the Appellate Authority is rendered unsustainable.

10. It is germane to notice that the writ Court is flooded with cases concerning public distribution system, particularly, allotment of fair price shop or allotment of cards to any particular fair price shop. Indiscriminate allotment of fair price shops or discriminate distribution of cards has led to this problem. Therefore, the authorities while allotting the cards should by and large seek to maintain the terms in Clause 11 of the Order which directs that there should be 800 cards to a fair price shop in the urban area and 500 cards in the rural area. The writ Courts cannot be expected to join the race of rival claimants of taking away of cards or giving of cards. The Government, its Officers, should exercise caution and encourage restraint in generating litigation by its action *qua* distribution of cards. It is also germane to notice that the Commissioner of Food and Civil Supplies has communicated to Deputy Directors to exercise caution while allotting fair price shops. The communication dated 07-08-2020 reads as follows:

“ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ, ಉಲ್ಲೇಖ(1)ರ ಪತ್ರದಲ್ಲಿ ಕೆ.ಎಫ್.ಸಿ.ಎಸ್.ಸಿ ವತಿಯಿಂದ ನಡೆಸಲ್ಪಡುತ್ತಿರುವ ಚಿಲ್ಲರೆ ಮಳಿಗೆಗಳು ಸರ್ಕಾರದ ಆದೇಶದಂತೆ ಸ್ಥಗಿತಗೊಂಡ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ಸದರಿ

ಪ್ರದೇಶದಲ್ಲಿ ಹೊಸ ನ್ಯಾಯಬೆಲೆ ಅಂಗಡಿಗಳನ್ನು ತೆರೆಯುವ ಹಾಗೂ ಪರ್ಯಾಯ ವ್ಯವಸ್ಥೆಯ ಬಗ್ಗೆ ಅನುಮತಿಯನ್ನು ನೀಡುವಂತೆ ಕೋರಿದುತ್ತೀರಿ.

ಹೊಸ ನ್ಯಾಯಬೆಲೆ ಅಂಗಡಿ ಮಂಜೂರಾತಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಉಲ್ಲೇಖ(3)ರಲ್ಲಿ ಸೂಚನೆಯನ್ನು ನೀಡಲಾಗಿದ್ದು, ಅದರಂತೆ ಎಲ್ಲಾ ಪ್ರಕರಣಗಳಿಗೂ ಸಹ ಕರ್ನಾಟಕ ಅಗತ್ಯ ವಸ್ತುಗಳ (ಸಾರ್ವಜನಿಕ ವಿತರಣಾ ಪದ್ಧತಿ) ನಿಯಂತ್ರಣ ಆದೇಶ 2016 ಅನ್ವಯ ಹೊಸ ನ್ಯಾಯಬೆಲೆ ಅಂಗಡಿ ಮಂಜೂರಾತಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ನಿಗದಿತ ನಮೂನೆಯ ಅರ್ಜಿ ಹಾಗೂ ಸೂಕ್ತ ದಾಖಲಾತಿಗಳನ್ನು, ನಿಯಮಾನುಸಾರ ಪರಿಶೀಲಿಸಿ ಯಾವುದೇ ದೂರುಗಳಿಗೆ ಅವಕಾಶ ನೀಡದೆ ಹೊಸ ನ್ಯಾಯಬೆಲೆ ಅಂಗಡಿ ಮಂಜೂರು ಮಾಡುವ ಬಗ್ಗೆ ಸೂಕ್ತ ಕ್ರಮವಹಿಸುವಂತೆ, ಕೈಗೊಂಡ ಕ್ರಮದ ಬಗ್ಗೆ ಮಾಹಿತಿಯನ್ನು ಈ ಕಾರ್ಯಾಲಯಕ್ಕೆ ಕಳುಹಿಸಿಕೊಡುವಂತೆ ಸೂಚಿಸಿದೆ.”

(Emphasis added)

The communication directs that new operations should be considered only after verification of documents without giving scope to any allegation or complaint. This remains only on paper. In every allotment there would be a complaint and those complaints galore before this Court by way of filing writ petitions. It is this, that has to be looked into by the competent authority – either the 1<sup>st</sup> respondent or the 2<sup>nd</sup> respondent in particular, the Commissioner, Department of Food, Civil Supplies and Consumer Affairs and put its house in order.

11. The learned Additional Government Advocate would submit that the policy today is one nation – one ration card. Any card holder can pick up his ration from any fair price depot. He need not depend upon the fair price depot that is allotted to him by

way of issuance of card is his submissions. If that is the policy, it is for the State to take the policy forward and redress all these problems of taking away ration cards from one, and giving it to another, at the whim and fancy of the officers - the 4<sup>th</sup> respondent - Deputy Director or any other Officer incharge of such distribution.

12. For the aforesaid reasons, I pass the following:

**ORDER**

- (i) Writ Petition is allowed in part.
- (ii) The order dated 20-09-2022 passed by the 3<sup>rd</sup> respondent/Appellate Authority is set aside.
- (iii) The matter is remitted back to the Appellate Authority to reconsider the appeal filed by the 5<sup>th</sup> respondent for the purpose for which it is filed and pass appropriate orders in accordance with law, bearing in mind the observations made in the course of this order.
- (iv) Before passing the order afresh, the Appellate Authority shall afford reasonable opportunity of hearing to all the parties to the *lis*.
- (v) The Appellate Authority shall decide the appeal as expeditiously as possible and at any rate within eight

weeks from the date of receipt of a copy of this order, if not earlier.

I.A.No.1/2022 stands disposed, as a consequence.

**Sd/-  
JUDGE**

bkp  
CT:MJ