

**HIGH COURT OF JAMMU AND KASHMIR AT
JAMMU**

OWP No. 730/2016

a/w

OWP No. 1597/2015, OWP No. 83/2016, OWP No. 1201/2016

OWP No. 1227/2016, OWP No. 1057/2016

OWP No. 1315/2016 & OWP No. 1339/2016

Date of Decision: 08.11.2016

Talib Hussain	vs.	State of J&K and ors.
Shahi Jahan Bhat and ors.	vs.	State of J&K and ors.
Showkat Ali and ors.	vs.	State of J&K and ors.
Kulbir Singh ad ors.	vs.	State of J&K and ors.
Fair Price Shop Dealers, Ramban	vs.	State of J&K and ors.
Shamim Akhter Wani and ors.	vs.	State of J&K and ors.
Sapna Bahu and anr.	vs.	State of J&K and ors.
Fair Price Shop Dealers Assocn.	Vs..	State of J&K and ors.

Coram:

Hon'ble Mr. Justice Alok Aradhe, Judge

Appearing counsel:

For petitioner (s): Mr. N. D. Qazi, Advocate

For respondent(s): Mr. Jahangir Iqbal Ganai, AG &

Mrs. Seema Khajooria Shekhar, SR AAG

(i)	Whether to be reported in Press, Journal/Media:	Yes
(ii)	Whether to be reported in Journal/Digest:	Yes

OWP No. 1597/2015

In this writ petition preferred under Article 226 of the Constitution of India read with Section 103 of the Constitution of J&K State, the petitioners *inter alia* seek writ of prohibition restraining the respondents from opening new fair price shops in Jammu Division on the ground that the same is in violation of the Cabinet Decision dated 16.07.2014.

The petitioners also seek writ of mandamus directing the respondents not to bifurcate the ration cards pertaining to the petitioners' fair price shops. In order to appreciate the petitioners' grievance, few facts need mention, which are stated infra.

2. The petitioners have been granted licences to run fair price shops in Paristan Hallan/Bass (Ukhral), Hoochak, Chulie Gujrara Senibati, Maligam Panchayat-A, Phagmullah Panchal, Bengara and Kundra Pogal Parstan from the year, 1997, 2006, 2004, 1994, 1992, 1997 and 2010 respectively. In view of order dated 01.08.2003 issued by the State Government, the petitioners, who are Ration Dealers of various fair price shops, are getting 5% of sales value of the food grains as commission. It is case of the petitioners that large numbers of complaints were received by the State Government with regard to the irregularities in distribution of the foodstuff. Thereupon, the State Government with a view to provide food grains at the nearest possible distance to the public in general and with a view to increase the sale outlets in compliance of the National Food Security Act, 2013 proposed to formulate a scheme in order to control the network of sale depots, by opening 7967 shops under the name and style of "Government Controlled Sales Depot" including existing Fair Price Shops. Such sales depots were required to cater the needs of 200 to 250 families. It is pleaded in the petition that the State Government passed order dated 14.03.2014 along with

memorandum for submission to the Cabinet for opening 7697 departmental sale outlets and for engaging 7696 salesman and 7696 helpers to run these Government sales outlets. The monthly honorarium of Rs. 4500/- was required to be paid to the Salesmen and Rs. 3000/- per month was to be paid to the Helpers. It is the case of the petitioners that the aforesaid memorandum submitted to the Cabinet was approved by the Cabinet vide order dated 16.07.2014 and the Consumer Affairs and Public Distribution Department was authorised to open 7697 sales outlets in replacement of existing Fair Price Shops and the outlet functioning through internal adjustment by engaging 7697 Salesmen and even number of helpers.

03. Thereafter, in pursuance to the decision dated 16.07.2014 taken by the Cabinet, the Secretary, Consumer Affairs and Public Distribution Department, J&K Civil; Secretariat, Srinagar vide communication dated 01.08.2014 directed the Directors of the Consumer Affairs and Public Distribution Department of both the divisions of the State to finalize the locations, where sale centres needs to be established and the licences for running the Fair Price Shops were required to be surrendered. It is further pleaded in the petition that the petitioners have surrendered their licences, however, respondent No. 1 issued notice dated 11.09.2015, by which meeting was convened on 14.09.2015 with regard to the opening of the New Fair Price Shops in

violation of the decision taken by the Cabinet. In the aforesaid factual background, the petitioners have approached this Court.

04. Learned counsel for the petitioners submitted that the respondents have taken contradictory stand inasmuch as in response to OWP No. 1389/2014, in which the validity of order dated 06.08.2014 was challenged, respondents have taken stand that in view of the complaints received from the consumers with regard to irregularities in distribution of the foodstuff, decision has been taken to convert the ration shops into Government Controlled Sales Depots, whereas now in the objections, stand it is stated that the Government once again wants to open more new fair price shops. It is further submitted that the respondents have not approached this Court with clean hands. It is further submitted that the respondents have violated the interim order dated 30.11.2015 passed by a bench of this Court, by which the respondents were restrained from opening fair price shops. It is urged that the Cabinet decision dated 16.07.2014 cannot be superseded by order dated 04.08.2016. In this connection, reference has been made to Rule 20(1) of Jammu and Kashmir Business Rules, 1968. It is also urged that no justification has been offered on behalf of the respondents for opening of new fair price shops instead of Government Controlled Sales Depots.

05. On the other hand, learned Advocate General submitted that the petitioners, who are residents of district Ramban, have sought relief in the writ petition in a representative capacity, which is not permissible in law, and none of the fundamental rights of the petitioners is violated. While referring to relief No. 2 claimed in the writ petition, it is argued that the petitioners have not surrendered their licences and attempt is being made by them to create monopoly. It is further submitted that Cabinet decision dated 16.07.2014 did not culminate into passing of order on behalf of the State Government as required under Section 45 of the Constitution of the State of Jammu and Kashmir, therefore, no writ of mandamus can be sought to implement the Cabinet decision. It is also submitted that the provisions of National Food Security Act, 2013 were made applicable to the State of J&K vide order dated 04.01.2016 wherein the State Government has to provide ration to 20 lacs more beneficiaries. Therefore, a policy decision was taken on 04.08.2016 to open new fair price shops.

06. It is submitted that the policy decision has been taken to open new fair price shops in public interest so as to provide ration at doorsteps and the policy has been framed on the basis of rational and reasonable criteria and the decision has been taken in public interest. It is argued that the scope of the judicial review in respect of the policy decisions is extremely limited. Learned counsel for the

respondents has placed reliance on the decisions of the Supreme Court in case of **District Collector and anr. vs. B. Suresh and ors.**, (1999) 5 SCC 612, **Bajaj Hindustan Limited vs. Sir Shadi Lal Enterprises Limited and anr.**, (2011) 1 SCC 614 and decision of this Court in case of **Mohammed Amin Dar and ors. vs. State of J&K and ors**, 2011 (4) JKJ 132 and **Mohd Amin Dar vs. State and ors.**, 2012 (4) JKJ 206.

07. I have considered the submissions made by both the sides and have perused the record. The scope of interference with the wisdom of the policy decision taken by the executive is well settled. The Supreme Court in the case of **Balco Employees Union (Regd.) vs Union Of India & Ors**, (2002) 2 SCC 333 held that wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the Courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. **In the case of P.T.R. Exports (Madras) (P) Ltd. vs Union of India** (1996) 5 SCC 268, it is held that the power to frame a policy by executive or legislative decision included the power to withdraw the same. The aforesaid decision in the case of **Balco Employees Union (Regd.) vs Union Of India & Ors (supra)** was subsequently upheld by the Supreme Court in the case of **Bajaj Hindustan**

Limited vs. Sir Shadi Lal Enterprises Limited and anr (supra). It is well settled in law that no person fundamentally to be appointed as an agent of a fair price shop under a Government Scheme (**See M.P. Ration Vekreta Sangh Socy. Vs. State of MP, AIR 1981 SC 2001**). Also see **P. Dharni and others vs. Government of Tamil Nadu andothers, (2013) 7 SCC 289** and **Kuchchh Jai Sankat Nivarana Samiti v. State of Gujarat, (2013) 12 SCC 226**.

08. In the backdrop of aforesaid well settled legal position, facts of the case in hand may be seen. In exercise of powers under section 3 of the Essential Commodities Act, 1955, the Central Government issued an order namely, 'Public Distribution System (Control) order 2001' for maintaining supplies and distribution of essential commodities. The State Government in pursuance of provisions of Public Distribution System (Control) order 2001 issued guidelines regarding opening of fair price shops on commission basis. Thereafter, the State Government had initiated proposal for conversion of existing private Ration Shops into Govt. Sale Outlets, which was approved by the Cabinet. However, the decision taken by the Cabinet did not culminate into passing of an order on behalf of State Government. In December, 2015, the State Government took decision to implement National Food Security Act, 2013 in the State of J&K and in pursuance of Policy decision of the Cabinet, an order dated 04.01.2016 was passed by which sanction for implementation of the 2013 Act

in the State with effect from 01.02.2016 was granted. On account of implementation of National Food Security Act, 2013, the number of beneficiaries increased from 99 lacs to 119 lacs. Thus, there was increase in the number of beneficiaries by 20 lacs. Therefore, the State Government felt the need to open new fair price shops. It is pertinent to mention that under the new policy, the existing fair shops shall not be closed or converted to the Government sales depot, but additional fair shops shall be opened. It is noteworthy that order dated 04.08.2016 has been issued in supersession of all previous Government orders.

09. By an order dated 02.09.2016 issued by the State Government, sanction has been accorded to establishment of 4388 new fair price shops on commission basis, out of which 2263 shops shall be opened in Jammu, whereas 2125 shops shall be opened in Kashmir. Thus, new fair price shops are being opened by the State Government to ensure smooth supply of ration to the beneficiaries at the door step. As per the policy the new ration shops have to be located within a radius of 1.5 to 2 Kms. from the residence of beneficiaries and each shop will cater to the needs of 250 beneficiaries. Thus the policy decision has been taken by the State Government in public interest which by no stretch of imagination can be said to be either arbitrary or irrational, warranting interference of this Court in exercise of powers of Judicial Review. Even for yet

another reason, no relief can be granted to the petitioners as this Court cannot issue mandamus to frame policy in a particular manner. (**See Census Commissioner and others vs. R. Krishnamurthy 2015 2 SCC 796).**

10. It is also relevant to mention here that the petitioners in no way affected by implementation of new policy as they would continue to run the fair price shops on commission basis. Otherwise also, the petitioners neither have any legal or fundamental right to be appointed as an agent of a fair price shop under a Government scheme, therefore, the petitioners cannot seek a writ of mandamus to enforce the decision taken by the Cabinet on 16.07.2014, which did not culminate into an order as required under section 45 of the Constitution of Jammu and Kashmir and which otherwise stands superseded by an order of the State Government dated 04.08.2016.

11. The petitioners have no legal right to insist that fair price shops should be converted to Government controlled depots. The policy decision has been taken by the State Government to cater to needs of 20 lacs additional beneficiaries and this Court cannot interfere with the policy decision merely on the ground that another view is policy.

12. In view of preceding analysis, I do not find any merit in this writ petition. In the result the same fails and is hereby dismissed.

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For the reasons assigned by this Court in the detailed order passed in OWP No. 1597/2015, these writ petitions are also dismissed on the same analogy.

(Alok Aradhe)
Judge

Jammu
08.11.2016
Karam Chand*