

HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

OWP No.1188/2015

C/W

OWP No.1677/2014

Date of Decision:29.09.2018

Ghulam Mohi-ud-din Parray

v.

State of J&K and ors

Coram:

Hon'ble Mr Justice Rashid Ali Dar, Judge.

Appearance:

For the Petitioner(s): Mr. M. M. Dar, Adv.

For the Respondent(s): Mr. Asif Bhat, AAG-for R1 to R6.

Mr. Naseer Ahmad Parray, Adv. vice Mr. Gulzar
Ahmad Bhat, Adv-for R7.

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| i) | Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |
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1. In OWP No.1677/2014, petitioner has projected his grievance regarding processing of the case of respondent No.7 for distribution of kerosene oil. It is being stated that the petitioner being an unemployed youth was engaged as a salesman by the respondent No.6 for some locations falling within his jurisdiction i.e. for location Saloora and Tindima Hail Jagir, in the year 2010 and is carrying the said distribution as on today.

2. In the second writ petition, i.e. OWP No.1188/2015, it is being stated that the Court in OWP No.1677/2014 had stayed the operation of communication dated 3rd October, 2014 issued under the signatures of

respondent No.4. On the basis of Court order, according to the petitioner, quota of the petitioner was not to be changed which is evident from the roster notified by the respondents. It is being stated by the petitioner that despite court order, the official respondents have issued a license in favour of respondent No.7 and on the basis of said license, formal order has been issued in favour of respondent No.7. The course adopted by the official respondents, according to petitioner, is improper and uncalled for.

3. The backdrop in which the relief is claimed in the two writ petitions can be precisely quoted as under:

- i) The petitioner, an unemployed youth, was *engaged as Salesman* by the respondent No.6 for distribution of K.oil for location Saloorra and Tindima Hail Jagir in the year 2010.
- ii) The respondents No.2 to 4 have initiated a process for issuing the license in favour of respondent No.7 against the location of the petitioner in violation of Govt. order No.75-CA&PD of 2010 and despite the reports submitted by respondent No.5 and 6, the respondent No.2 to 4 are not taking recourse of the those reports and were processing the case of the respondent No.7. The said process was challenged by the petitioner through the medium of writ petition (OWP) No.1677/2014. The said writ petition considered by the Court and vide order dated 29.11.2014, operation of communication dated 03.10.2014, impugned therein, was stayed.

iii) It is further projected in the petition later filed that though on the basis of court order, quota of the petitioner was not to be changed, however, despite same, the official respondents have issued license in favour of respondent No.7 pursuant to which he has been authorized to distribute K.oil for the location Saloora for 250 RTs. This order is being challenged in OWP No.1188/2015.

4. Heard learned counsel for the parties.

5. Learned counsel for the petitioner submitted that since the petitioner, in terms of order passed by respondent Deputy Registrar, Cooperative Societies, had been engaged as a Salesman for Cooperative Sale Depot subject to the condition that the cost of the allotted quantity of K.oil/Agriculture inputs is deposited in advance and he has to work on commission basis as admissible, the respondents 1 to 4 could not process the case of respondent No.7. He has also referred to the order passed in OWP No.483/2014. Reference has also been made of various annexures, from which, according to learned counsel, it can be gathered that the petitioner has been successfully making compliance of the stipulations in terms of which he had to make distribution of K.oil and to function as an agent for distribution of said commodity. It is also his plea that the petitioner is an unemployed person and he having altered his position on the representation of the official respondents, the distribution of K.oil earmarked for him could not be given to anybody else. While elucidating the same, it is being stated that the petitioner is a literate person and has not taken resort to any other vocation though he could do so had the official

respondents not made the representation to him regarding distribution of k.oil on payment of commission.

6. In the first writ petition filed, according to learned counsel for the petitioner, the process initiated for engagement of respondent No.7 was under challenge. In the writ petition later filed, the action taken by the official respondents in issuing a license in favour of respondent No.7 despite court orders is being challenged. It is also his contention that the Law Officer on whose advice respondents 1 to 4 are banking upon could not opine so and the respondents could not proceed ahead in the matter as per the policy in vogue prior to grant of stay on 3rd October, 2014.

7. On the other hand, counsel for the respondents contended that the petitioner has no locus standi to file the writ petition as none of his rights has been infringed. Petitioner is an engagee of the Cooperative Society and in case respondents 1 to 4 find necessity of having allocation of any essential commodity to be made in any area in favour of any beneficiary, they could do so. It can be a person other than Co-operative Society which can be even chosen for this. Grievance if any of the terms of any understanding between the oil companies/State Govt. and a Co-operative Society could be projected by such a Co-operative Society and not engagee of the Society. Whatever respondents 1 to 4 have done, according to him, has been done in public interest and in clear compliance of the provisions of Essential Commodities Act and Rules issued thereunder.

8. In Rebuttal, Mr. Dar, learned counsel for the petitioner, again made reference of various contentions raised in the writ petition and also what is referred in the annexures enclosed with the writ petitions.

9. On examination of the documents annexed with the petition(s), it transpires that the petitioner herein has made the base for filing of writ petition, an order issued under the signatures of respondent No.6 with the following recitals:

ORDER

The services of Mr. Saif-ud-Din Parray, Storekeeper Sale and Service Coop. Society Kandibabareshi Kachwamuqam for handling K oil distribution at Ashoora Sale Depot is withdrawn with immediate effect and Shri **Ghulam Mohi-ud-Din Parray** S/o Ab. Salam Parray R/o Athoora is engaged as **Salesman for the said Coop. Sale depot** subject to the condition that the cost of the allotted quantity of K oil/Agri Inputs is deposited in advance and the has to work on commission basis as admissible and the engaged person will not claim for permanent employment in any of the coop. society of block Wagoora.”

10. The commodity which has been identified to be dealt by the petitioner herein is controlled by the provisions of Essential Commodities Act read with the orders issued under the Act from time to time. The Kerosene (Restriction on Use and Fixation of Ceiling Price) Order, 1993, of which reference is made in the petition, restricts the use of kerosene oil supplied under public distribution system. No person other than the dealer or Government Oil Company or parallel marketer can sell kerosene oil to any

person. No dealer having stock of kerosene supplied under the public distribution system at the business premises can refuse to sell, distribute or supply the kerosene oil to any consumer on any working day during the working hours. Dealer, in the order, has been defined a person, firm etc. including a co-operative society approved by the Government or company or State or Central Government or a parallel marketeer.

11. Rule 3 of The Jammu and Kashmir Kerosene Oil (Licensing) Order, 1974, prescribes that no stockiest, dealer or retail dealer shall obtain store for supply of kerosene oil except under and in accordance with the provisions of this Order and the terms and conditions of the license issued to him in this behalf by the licensing authority.

12. The amendment brought in the aforesaid Order on 17th of April, 1997, defines the “Retail dealer” which includes co-operative societies registered under the J&K Cooperative Societies Act, 1960.

13. The amendment brought on 25th of September, 1997, provides that the cooperative societies registered under the Jammu and Kashmir Cooperative Societies Act, 1960, shall not be required to obtain license subject to the conditions that the Deputy Registrar has to certify that the society is functional and financially sound and the society shall not directly lift or sell kerosene oil to the public or any allottee without authorisation of the Deputy Commissioner concerned or Director of Food and Supplies.

14. Government Order No.49 of 1997 dated 11.03.1997 brought on record by petitioner, lays down the criteria for issuance of license within

the meaning of The Jammu and Kashmir Kerosene Oil (Licensing) Order, 1974. Some other Government orders have also been referred by the petitioner herein, which, according to his understanding, are relevant to examine his status and consequent grant of reliefs prayed for in the writ petition.

15. The jural relationship of the petitioner with the respondents has to be mainly seen in the light of the order (Annexure-K appended with writ petition), quoted hereinabove. It vests in him the status of an engagee for selling kerosene oil for a particular depot. The sale and stocking of kerosene oil, in essence, is to be made by the Cooperative Society and the petitioner herein has to deal with his assignment as per the parameters drawn by the Co-operative Society, managed and controlled under the Act. The rights and liabilities of the members of the Cooperative Society, its management, privileges and the powers etc. of the supervising officers are also delineated in the said Act.

16. The petitioner herein is seeking grant of writ of Mandamus, Prohibition and Certiorari in both the writ petitions. It is no more *res integra* that for issuance of a Writ of Mandamus, the person invoking jurisdiction of the High Court is to establish a legal right in himself. He has also to manifest that the person against whom he seeks enforcement has a legal obligation to perform but has failed or neglected to do so. Such a legal duty emanates from either in discharge of a public duty or by operation of law. The object of Mandamus is to prevent disorder from a failure of justice. The writ of Certiorari is issued against the acts and proceedings of a judicial or

quasi judicial body conferred with powers to determine question affecting the rights of subjects and obliged to act judicially. Same is done when it is found to have acted without jurisdiction or in excess of jurisdiction or in flagrant disregard of law and procedure. In certain cases of administrative and executive action, writ of Mandamus may be issued, however, if quasi judicial obligation is implied or where no reasonable body of persons properly apprised could arrive to such a decision or the authority exercising the powers is swayed by irrelevant considerations. The primary difference between writ of Certiorari and Prohibition is the stage at which they are issued. The considerations which weigh in issuance of both the writs are same. Writ of Prohibition, however, forbids the authority or tribunal to proceed ahead, Mandamus commands it to do a particular thing and Certiorari requires the action taken to be examined and if necessary to have the order quashed.

17. The order of which reference is made hereinabove and from which, according to the petitioner, legal relationship is created between him and the respondents, does not give a inkling of the fact that the respondents have bound down themselves to have the arrangement referred in Annexure-K (supra) in eternity. At the cost of repetition, it is stated that the petitioner has to attend his assignment merely on commission basis. He had to do so as an agent. His Principal has been the society created under Co-operative Societies Act. Government functionaries of the Co-operative department may have administrative control for certain matters over a Co-operative Society but a Society itself is a legal person, capable of acquiring certain rights and liabilities. It is the petitioner himself who sounds that a license

for sale or stocking of kerosene, is not required by a Society. An individual has not been exempted from acquiring a license. It is not even his plea that he had procured a license meant and prescribed by the Act. Even the Cooperative Societies, of which reference is found in the Essential Commodities Act and the orders framed there-under, have to act subject to the mechanism provided therein. The license provided for selling or stocking of the kerosene oil is determinable in nature. The Government or its functionaries or the functionaries of oil companies, reference of which is found in the relevant Act/order, have not a power to permit the stocking or dealing of the commodity by the said dealers including the Cooperative Societies in perpetuity and as per the arrangement devised at one point of time. The distribution of kerosene oil to consumers has a public element in it and the respondents No.1 to 6 are under a legal obligation in terms of the orders issued under Essential Commodities Act to respect the said public element. They have to discharge their duties as the repositories of public trust. This certainly would necessitate any arrangement made for distribution of a rationed item to be varied or dispensed with at any time. The petitioner herein, as noticed hereinabove, at the most is only an agent of a cooperative society as a salesman and there is no statutory provision or any rule or regulation in terms of which he can compel either the respondents or the person who has engaged him to do or forebear from doing what is referred in the both the writ petitions. The act of his engagement by respondent No.6 whether had any statutory or other source, remains unexplained in pleadings. The Government would be bound by the actions of its officers only to the extent to which same is authorized by Section 122 of 124 of the Constitution of J&K and any action *de horse* the

Constitution or any other statute would not create any enforceable right. The petitioner, thus, has not been able to show his locus standi for preferring these petitions. No statutory or other duty has been depicted to be on the respondents to act in the manner in which the petitioner seeks them to proceed.

18. In view of above position, the petitioner has failed to make out any ground for issuance of any writ. Both the petitions are found to be without any merit, as such, dismissed.

Srinagar
29.09.2018
"Bhat Altaf, PS"



(Rashid Ali Dar)
Judge