

IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT
BILASPUR (C.G.)

Writ Petition (C) No. 2319 of 2014

PETITIONER

Gourishankar Mahila Swasahayata
Samuh, through the President-
Sumitra Parganiha wife of Shri
Manharanlal Parganiha, aged about 55
years, resident of Village-Taralim,
Post-Lenjwara, Tahsil and Police
Station-Berla, District-Bemetara
(C.G.)

VERSUS

RESPONDENTS

- :1. The State of Chhattisgarh, through
the Secretary, Food and Civil Supplies
Department, Mantralaya New Raipur
(C.G.)
2. The Collector (Food), Bemetara,
District-Bemetara (C.G.)
3. The Sub-Divisional Officer, Saja,
District-Bemetara (C.G.)

WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA



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HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench: Hon'ble Shri Justice P. Sam Koshy

Writ Petition (C) No. 2319 of 2014

Petitioner

Gourishankar Mahila Swasahayata
Samuh

VERSUS

Respondents

State of Chhattisgarh and others

Present: Ms. Sharmila Singhai, counsel for the petitioner.
Shri Siddharth Rathore, Dy. GA for the State.

Oral Order
(13.02.2015)

Notices were issued in this case on 01.12.2014 upon which the respondents have filed their reply and the petitioner has filed rejoinder also.

With the consent of counsel for the parties, the petition is finally heard and disposed of.

2. The petitioner through the instant writ petition, has challenged the order dated 1.11.2014 whereby the allotment of Fair Price Shop to the petitioner was suspended vide the impugned order Annexure P-1.

3. Factual matrix of the case is that on 5.2.2011 (Annexure P-3), the petitioner was allotted the Fair Price Shop in village Bhatgaon, Tahsil Berla. The petitioner was operating the said Fair Price Shop smoothly from the year 2011 onwards. Suddenly, on 14.10.2014, the Food Inspector conducted an inspection of the Fair Price Shop and prepared a *panchnama* which finds place in Annexure P-4 with the Writ Petition and which is part of the report prepared by the Food Inspector and the report was placed before SDO(Revenue). A perusal of the *panchnama* dated 14.10.2014 would show that during the course of the investigation, the Food Inspector did not find any sort of irregularity in the operation of the Fair Price Shop by the petitioner and the relevant entries in the *panchnama* are as under:-

"आज दिनांक 14/10/2014 को हम निम्न उपस्थित
हस्ताक्षरित पंचगणों के समक्ष खाद्य निरीक्षक बेरला द्वारा



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शासकीय उचित मूल्य दुकान भटगांव तहसील बेरला जो कि गौरीशंकर महिला स्व सहायता समूह तारलिम द्वारा संचालित है कि जांच की गयी उक्त दुकान में दुकान के खुलने व बंद होने का समय एक बोर्ड में कमशः 10.30 ए0एम0 से 5.00 पी0एम0 लिखा है तथा अन्य निर्धारित बोर्ड लगे पाये गये किंतु हितग्राहियों की सूची रेट से प्राप्त वाली दुकान में उपलब्ध पायी गयी तथा दुकान में खाद्यान के नमूने प्रदर्शित नहीं पाये गये एवं भौतिक सत्यापन में चावल 0.35 किंवटल कम एवं गेहूं 0.40 किंवटल अधिक पाया गया एवं उक्त संबंध में उक्त दुकान के विक्रेता तामेश्वर परगनिहा द्वारा बताया गया कि कई हितग्राही अपनी पात्रतानुसार चावल व गेहूं न ले जाकर चावल के बदले गेहूं व गेहूं के बदले चावल ले जाते हैं इस कारण भौतिक सत्यापन में उक्त अंतर प्राप्त हो रहा है। जांच के समय उपस्थित हितग्राहियों द्वारा बताया गया है कि उक्त दुकान नियमित रूप से खुलती है एवं खाद्यान एवं अन्य सामग्री निर्धारित मूल्य एवं निर्धारित मात्रा में प्राप्त होता है तथा उक्त दुकान से किसी प्रकार की शिकायत नहीं है। उक्त दुकान में माननीय सर्वोच्च न्यायालय द्वारा सार्वजनिक वितरण प्रणाली के संबंध में दिये गये निर्देशों की प्रति लगी पायी गयी तथा स्टॉक बोर्ड मूल्य सूची बोर्ड संधारित पाया गया तथा स्टॉक रजिस्टर दिनांक 14/10/2014 का आरंभिक स्कंध तक संधारित पाया गया।”

Based upon the said *panchnama*, the Food Inspector had prepared a report to be placed before the SDO(Revenue) which is Annexure P-4 dated 16.10.2014. Surprisingly, the report prepared by the Food Inspector appears to be just opposite and contrary to the investigation report which reflects from the *panchnama* dated 14.10.2014 and in the said report of the Food Inspector, he states that there are various irregularities and violations of Chhattisgarh Public Distribution System (Control) Order, 2004 (for short 'the Order 2004') and accordingly, the Food Inspector recommended for a prompt action against the petitioner.

4. On the said report of the Food Inspector dated 16.10.2014, the SDO(R) also on the same day i.e. 16.10.2014 vide Annexure P-7, made a recommendation to the Collector whereby relying on the report of the Food Inspector, he recommended for suspension of the allotment of the

Fair Price Shop made to the petitioner and vide the same note sheet, the SDO also submits that upon suspending the petitioner's allotment, the Fair Price Shop may be allotted to another applicant Jai Mahamaya Mahila Mandal, Bhatgaon. The very fact that Jai Mahamaya Mahila Mandal, Bhatgaon was shown as an applicant for allotment of the said Fair Price Shop establishes the fact that the respondent/authorities had somehow made up their mind for cancelling the allotment made to the petitioner and also to allot the said Fair Price Shop to a third party.

5. After the recommendation of the SDO(Revenue) to the Collector on 16.10.2014, a show cause notice dated 25.10.2014 (Annexure P-5) was issued calling upon the explanation of the petitioner to which the petitioner promptly replied on 30.10.2014 and immediately on the next date, i.e. 1.11.2014, the impugned order (Annexure P-1) was issued suspending the allotment of the petitioner of the Fair Price Shop and on the same day an order Annexure P-8 issued by SDO (Revenue) shows that he had allotted the said Fair Price Shop to another society known as Sewa Sahkari Samiti Sardha. This has lead to the filing of the writ petition.

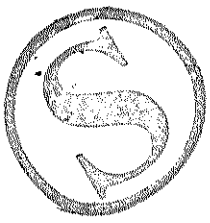
6. Counsel for the petitioner submits that reply to the show cause notice has not been considered by the respondents in any manner and therefore, the impugned order appears to be predetermined and that it also reflects the arbitrariness and the malafide intention on the part of the respondents. She further submits that the very fact that the respondents were predetermined to remove the petitioner from the Fair Price Shop is reflected from the attitude of the Food Inspector himself who at the time of preparing of the *panchnama* during the course of investigation, finds no irregularity to have been committed in the operation of the Fair Price Shop but after 2 days when he submits a report to the SDO(Revenue), he submits an entirely contradictory report stating that there are large number of irregularities in the conduct of the Fair Price Shop by the petitioner. She further contends that the malafides on the part of the respondents is further reflected from document Annexure P-7 dated 16.10.2014 on which date the SDO had received the report of the Food Inspector and the SDO on 16.10.2014 itself had expressed his intentions of removing the petitioner from the said Fair Price Shop goes to establish that they were predetermined in giving the said Fair Price Shop to a different society. This is also one of the reasons that when Annexure P-1,

the impugned order dated 1.11.2014 was passed, the respondents have not shown any reason or any consideration of the reply submitted by the petitioner to the show cause notice.

7. Thus, for these reasons, the petitioner prays for setting aside of the impugned order dated 1.11.14.

8. Per contra, the State counsel opposes the writ petition and submits that the petitioner has been given an opportunity of hearing vide Annexures P-5 and P-6 which is a show cause notice which itself shows that it was not a case where the right of hearing has been denied to the petitioner before the issuance of the impugned order. Further, counsel for the respondents also submits that there is an alternative remedy provided under the Order 2004 whereby, the petitioner could have approached the higher authorities for the redressal of his grievance and for these reasons, the writ petition was not maintainable. It is further submitted that fresh allottee has not been made a party by the petitioner and therefore, the petition also suffers from non-joinder of necessary parties.

9. Having perused the record and upon hearing counsel for either side, what clearly reflects is that the impugned order Annexure P-1 dated 1.11.2014 does not reflect any application of mind by the authorities before suspending the allotment made to the petitioner. Further, the authorities have also not taken care of the *panchnama* which was prepared by the Food Inspector on the date of inspection itself wherein the Food Inspector has not found any irregularity in the operation of the Fair Price Shop. These aspects ought to have been considered by the higher authorities even when the petitioner had brought it to the notice of the authorities or the authorities should have dealt upon it before passing the punitive order. Further, the action on the part of the respondents also smells malafide on account of the fact that the SDO(R) at the very first instance itself, before issuance of show cause notice to the petitioner, had decided to take action against the petitioner, whereby he had disclosed his mind of suspending the petitioner from the Fair Price Shop and also was predetermined to allot the said shop to a third person. Thus, the action on the part of the respondents, apparently is malafide and the allegations are contrary to the *panchnama* report of the Food Inspector dated 14.10.2014.



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10. For the foregoing reasons, this Court is of the opinion that the impugned order does not deserve to be sustained and the same is accordingly set aside/quashed. The writ petition is allowed. No order as to costs. Consequences to follow.

Sd/-
P. Sam Koshy
Judge

Priya