

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 30TH DAY OF NOVEMBER 2015/9TH AGRAHAYANA, 1937

W.A. No. 2527 of 2015 () IN W.P.(C) No.29123/2004

AGAINST THE JUDGMENT IN WP(C) NO.29123/2004 OF THE HIGH COURT OF
KERALA DATED 15-07-2015

APPELLANT(S)/PETITIONER :

K.SURENDRAN, S/O. KRISHNAN,
PANANTHADY HOUSE, PIRIYARI P.O.
PALAKKAD DISTRICT.

BY ADV. SRI.P.K.MUHAMMED

RESPONDENT(S)/RESPONDENTS :

1. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
DEPARTMENT OF CIVIL SUPPLIES, THIRUVANANTHAPURAM.
2. CIVIL SUPPLIES COMMISSIONER
OFFICE OF THE CIVIL SUPPLIES COMMISSIONER
THIRUVANANTHAPURAM.
3. DISTRICT COLLECTOR
PALAKKAD DISTRICT.
4. DISTRICT SUPPLIES OFFICER
CIVIL STATION, PALAKKAD.
5. K.W.SHABEENA
SHAMINA MANZIL, KODUNTHIRUPPILLY POST
PALAKKAD DISTRICT.

R1-R4 BY STATE ATTORNEY

BY SR.GOVERNMENT PLEADER SRI.P.I.DAVIS

R5 BY SRI.AYPE JOSEPH

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
30-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

W.A. No. 2527 of 2015 ()

APPENDIX

PETITIONER' (S) ANNEXURES:

ANNEXURE A COPY OF THE RATION CARD NO.1946017876 STANDING IN THE
NAME OF FATHER OF THE 5TH RESPONDENT WAHAB WITH TRUE
ENGLISH TRANSLATION.

ANNEXURE B COPY OF THE MEDICAL CERTIFICATE DATED 05.09.2015 ISSUED
TO THE APPELLANT BY DR.SANTHYANGAPANI C., PRIMARY HEALTH
CENTRE, MELAMURI, PALAKKAD ALONG WITH TRUE ENGLISH
TRANSLATION.

RESPONDENT' (S) EXHIBITS: NIL

//TRUE COPY//

PA TO JUDGE

bka/-

ASHOK BHUSHAN, C.J.
&
A.M. SHAFFIQUE, J.

W.A. No. 2527 of 2015

Dated this the 30th day of November, 2015

J U D G M E N T

Ashok Bhushan, C.J.

Heard the learned counsel appearing for the appellant, the learned counsel for the 5th respondent as also the learned Government Pleader.

2. This writ appeal has been filed against the judgment passed by the learned Single Judge dated 15.07.2015 in WP(C) No.29123/2004, by which judgment, the writ petition filed by the appellant was dismissed. The writ petition was filed by the appellant seeking the following reliefs;

- i) Call for the records relating to Exts.P5, P7, P9, P10 & P12.
- ii) Issue writ of certiorari or other appropriate writ or order or direction quashing Exts.P5, P7, P9, P10 & P12.
- iii) Issue a writ of mandamus or other appropriate writ or order or direction directing respondent nos.1 to 4 to issue licence in favour of the petitioner in respect of ARD No.29 of Palakkad

Taluk forthwith.

iv) Pass such other reliefs as just and proper in the nature of this case.

3. The appellant was granted licence to run ARD No.29 in Palakkad Taluk on 27.01.1994, which was suspended on certain charges. However, by an order passed by the District Supply Officer, the shop was reinstated by forfeiting the security, by an order dated 29.10.1999. The order was served on the appellant, but, he did not turn up to run the shop. A notice dated 18.03.2000 was issued to the appellant by the Taluk Supply Officer intimating that if the licence was not resumed within 7 days of the receipt of the notice, the ARD would be cancelled. In spite of the service of the said notice, the appellant failed to take charge of the ARD. On 06.06.2000, the appellant furnished a statement expressing his inability to continue the ration shop due to financial difficulties. Consequently, the licence was cancelled by letter dated 16.02.2001 and notification was issued calling applications for ARD No.29. The appellant

..3..

and the 5th respondent had submitted applications. However, the 5th respondent was appointed as the licensee of ARD No.29. The appellant challenged the same in OP No.29075/2001, wherein this Court directed to consider the appeal preferred by the appellant. The matter was again considered and the appellant's appeal was recently rejected by the District Collector as per Ext.P7 order, finding that the appellant has expressed his inability to run the shop; and the 5th respondent was appointed as licensee of ARD No.29. Subsequently, the said order was set aside and the matter was remanded; and thereafter, as per Ext.P9 order, the matter was remanded again and Ext.P10 order was passed by the District Collector, against which, a revision petition was filed before the Civil Supplies Commissioner. The revision petition was rejected by Ext.P12 order dated 07.09.2004. The appellant had filed the writ petition challenging the aforesaid orders. The learned Single Judge, after considering all aspects of the matter, dismissed the writ

petition.

4. The learned counsel for the appellant, in support of his contentions, submits that the appellant never expressed his unwillingness to run the shop. He could not run the shop temporarily due to illness and he never filed any application to run the shop. It is on record that the appellant was informed by the Taluk Supply Officer that if the licence was not resumed within 7 days of the receipt of the notice, the ARD would be cancelled; and the fact that after getting notice, the appellant failed to run the shop was a sufficient reason for cancelling the licence. We do not find any error in the orders of the authorities cancelling the licence of the appellant to run the shop. When notification was issued for appointment of fresh licensee, the appellant and the 5th respondent have applied and the 5th respondent was selected.

5. The learned counsel for the appellant further submitted that even the 5th respondent has not till date started the shop and directions are to be issued for

..5..

inviting fresh applications for appointment of licensee to ARD No.29. The learned counsel for the 5th respondent, refuting the submission, contends that it was in view of the interim order that the shop could not be run by the 5th respondent.

6. A counter affidavit has been filed by the State, in which, para 12 states that the building, in which, the 5th respondent proposed to run the shop, is still not in a usable condition. Para 12 reads as under;

“12. The building in which Smt.K.W.Shabeena propose to run the shop is still not in a usable condition. It is submitted that eligibility of persons who apply for authorization to run ARD is considered based on their fulfillment of statutory requirements and standing orders issued from time to time by Director of Civil Supplies. The fact that the father of Smt.K.W.Shabeena was dismissed from the licence-ship of an ARD, will not disqualify for her appointment as an ARD. It is most humbly submitted that the building where Smt.Shabeena has proposed to run the ARD 29 is found not in a usable stage as per the report of the Taluk Supply Officer and Smt.K.W.Shabeena has not turned up to run the shop till date after elapsing 3 years on the basis of the stay order of this Hon'ble Court dated 05.10.2004. It is submitted that ARD 29 still remain attached to ARD 110 so as to maintain uninterrupted supply of rationed articles to the card holder.”

It is not disputed before us that the shop is not being run by the 5th respondent even though more than 10 years'

..6..

period has elapsed. Whether there was sufficient justifiable ground for the 5th respondent in not running the shop is a question of fact, which has to be examined by the District Supply Officer, and thereafter, consequential action has to be taken. In view of the foregoing discussion, we are of the view that there is no error in the findings of the learned Single Judge warranting interference. There was no sufficient reason for holding the appointment of the 5th respondent is bad.

7. Though the learned counsel for the appellant contends before us that the 5th respondent is not a resident of the area, we do not find any reason to interfere with the said selection as authorities have made selection after examining all the aspects.

8. However, in view of the allegations we have noted in para 12 of the counter affidavit of the State, the 4th respondent is directed to consider the issue as to whether there was sufficient cause for the 5th respondent in not starting functioning of the shop. On submission of

..7..

a copy of this judgment, the 4th respondent shall issue notice to the 5th respondent as to whether there was sufficient reason for not starting the running of the shop and appropriate action shall be taken for fresh notification if required. The 4th respondent may take appropriate decision within a period of two months from the date of receipt of a copy of this judgment.

Subject to the above, the writ appeal is dismissed.

Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE

bka/-