

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 15TH DAY OF JULY 2015/24TH ASHADHA, 1937

WP(C).No. 29123 of 2004 (P)

PETITIONER(S):

**K. SURENDRAN, S/O. KRISHNAN,
PANANTHODY HOUSE, PIRAYIRI P.O., PALAKKAD DISTRICT.**

**BY ADVS.SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P**

RESPONDENT(S):

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

**BY GOVERNMENT PLEADER SRI. MANOJ P. KUNJACHAN
R5 BY ADV. SRI.P.M.MOHAMMED ALI
R5 BY ADV. SRI.AYPE JOSEPH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- P1: COPY OF THE PROCEEDINGS OF THE RESPONDENT NO.4 ON 16.02.01.
- P2: COPY OF THE NOTIFICATION DATED 2.03.01 OF MALAYALA MANORAMA DAILY.
- P3: COPY OF THE PETITION DATED 7.4.01 SUBMITTED TO THE RESPONDENT NO. 3 BY THE RESPONDENT.
- P4: COPY OF THE PETITION DATED 5.7.01 SUBMITTED TO THE RESPONDENT NO. 3 BY THE PETITIONER.
- P5: COPY OF THE ORDER DT. 10.8.01 PASSED BY THE RESPONDENT NO.4.
- P6: COPY OF THE APPEAL SUBMITTED BEFORE THE RESPONDENT NO.1 ON 11.9.01.
- P7: COPY OF THE ORDER DT. 10.1.03 PASSED BY THE RESPONDENT NO. 3.
- P8: COPY OF THE REVISION PETITION FILED AGAINST EXT.P7 DT. 21.7.03.
- P9: COPY OF THE ORDER DT. 30.7.03.
- P10: COPY OF THE ORDER DT. 9.12.03.
- P11: COPY OF REVISION PETITION SUBMITTED BEFORE THE RESPONDENT NO.2 DATED NIL.
- P12: COPY OF THE ORDER DATED 7.9.04.
- P13: COPY OF RENT DEED IN THE NAME OF THE PETITIONER DT. 3.10.01.
- P14: COPY OF THE INTENT DT. 9.10.04 ISSUE BY THE TALUK SUPPLY OFFICER TO ASSANAR P A.
- P15: COPY OF THE INTENT OF SUGAR DATED 1.10.04.
- P16: COPY OF THE INTENT IN RESPONDENT OF KEROCE DT. 1.10.04.
- P17: COPY OF THE MONTHLY STATEMENT SUBMITTED TO ASSANAR TO THE CIVIL SUPPLIES DEPT. DT. 1.10.2004.
- P18: ORIGINAL APPOINTMENT ORDER OF THE PETITION - ORDER DT. 27.1.94 PASSED BY THE RESPONDENT NO. 4.

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

P.A. TO JUDGE

K. VINOD CHANDRAN, J.

W.P(C). No.29123 of 2004

Dated this the 15th day of July, 2015.

JUDGMENT

The petitioner is aggrieved with Exts.P5, P7, P9, P10 and P12 orders of the authorities under the Kerala Rationing Order, 1966 [for brevity, the Order of 1966]. The petitioner had been granted a licence to run ARD No.29 in Palakkad Taluk on 27.01.1994 as per Ext.P18. The petitioner, while conducting the same, the licence was suspended for reason of certain discrepancies. A charge memo was also issued, calling for explanation. On detection of discrepancies, the petitioner's licence was suspended and the ration shop was attached to another dealer as a temporary arrangement. Subsequently, on the basis of the explanation offered by the petitioner, the security deposit was forfeited and the petitioner was imposed with certain penalty; and the licence restored in the name of the petitioner. Admittedly, the petitioner never re-commenced the operation of the ARD and it continued to be attached to another dealer.

2. The Counter Affidavit of the Government shows that, the penalty imposed was also not paid by the petitioner. In any event, later on, the petitioner is said to have submitted a letter before the District Supply Officer, expressing his inability to continue the ration shop, for reason of financial incapacities. The District Supply Officer hence cancelled the licence granted to the petitioner as per Ext.P1 and notified it as per Ext.P2.

3. The learned counsel for the petitioner contends that, in fact the cancellation was not warranted, since the petitioner had only asked for temporary transfer of the ration shop, due to the illness afflicting the petitioner. The petitioner also relies on the first proviso to sub-clause (2) of clause 51 of the Order of 1966 to contend that temporary arrangement could have been made on the application of the petitioner. The copy of the communication issued by the petitioner to the District Supply Officer is not produced and the learned counsel for the petitioner would urge that, it is for the respondent to produce copy of that communication. The said communication definitely would indicate that the petitioner had only sought for temporary shifting of the ration shop, is the contention.

4. To answer the above contention essentially, it is to be noticed that, Ext.P1 is an order issued in 16.02.01. Immediately thereafter Ext.P2 publication dated 20.03.01 was made. The petitioner moved the District Collector against Ext.P1 by Ext.P3, and also applied under Ext.P2 notification. The District Supply Officer by Ext.P5 dated 10.08.01 granted the licence of the ARD to the 5th respondent. In Ext.P5, it was also found that the petitioner's complaint, Ext.P3, was rejected by the District Collector. By virtue of the direction of this Court in O.P.29705 of 2001, the District Collector reconsidered Ext.P3, and again rejected the same by Ext.P7. The challenge to Ext.P7 was allowed by the 2nd respondent, and the 2nd respondent remanded the matter by Ext.P9. The District Collector again considered the issue and rejected the complaint of the petitioner by Ext.P10. Ext.P10 stood confirmed by Ext.P12, which orders are impugned herein.

5. The proviso to sub-clause (2) of Clause 51 of the Order of 1966, does not entitle a dealer to seek for temporary shifting of the business to another. What the proviso intends is the nomination of a legal heir or a family member in the event of the

licencee being incapable of running the ration business. The petitioner never had a contention that the petitioner had nominated any person for such temporary appointment, which as per the proviso, could also lead to permanent appointment on the essential conditions being satisfied. The various orders would reveal that the petitioner after being imposed with a penalty, was restored with the licence on 29.10.99 as is indicated by item No.3 referred to in Ext.P1. Ext.P1 indicates that the petitioner also paid the penalty. But the petitioner having not re-commenced business, was issued with communication dated 18.03.2000, threatening cancellation; if the licence was not resumed in seven days. It was subsequent to that the petitioner voluntarily sought cancellation of the licence by letter dated 06.06.2000. The above facts are revealed on a reading of Ext.P7.

6. By Ext.P2 notification, applications were invited for the grant of licence to ARD No.29 in Palakkad Taluk. Pursuant to the same, both the petitioner and the 5th respondent had applied for the grant. The applications of both the petitioner and the 5th respondent were considered as per Ext.P5. It was specifically noticed in Ext.P5 that, the petitioner had earlier conducted the

ration shop as a licensee and had in writing, expressed his incapacity to run the shop. The licence earlier granted to the petitioner was found to have been revoked on such expression made by the petitioner in writing. Further, it was also found that the petitioner had not produced any documents with respect to the building, in which the ration shop has to be conducted. Ext.P5 was never challenged by the petitioner. The challenge pursued was of the cancellation and the grant by the subsequent notification attained finality; against which no proceedings were initiated.

7. The petitioner had filed an independent petition before the District Collector, Palakkad dated 07.04.2001, even when the grant was pending consideration before the District Supply Officer. The petitioner's application was rejected on the ground that the District Collector had already considered the grant and the 5th respondent was appointed by the District Supply Officer as approved by the District Collector by Ext.P7. Ext.P7 was challenged by a further appeal at Ext.P8. Ext.P9 remanded the matter to the District Collector. By Ext.P10, the District Collector again considered the petition and rejected the contention against

cancellation. There was no challenge against the grant as such.

8. The petitioner is disentitled from challenging any of the orders by reason of the petitioner having not challenged the subsequent grant by appropriate proceedings as provided in the Order of 1966. As was noticed earlier, Ext.P1 cancellation was never challenged. The petitioner merely filed a petition before the District Collector dated 07.04.2001, challenging the revocation of the licence. In the meanwhile, the proceedings for fresh grant as notified in Ext.P3 continued. The petitioner and the 5th respondent applied for the grant, the same was granted in favour of the 5th respondent by Ext.P5 and it also stood approved by the District Collector on 31.07.2001. The petitioner failed to challenge Ext.P5 grant.

9. The petitioner only proceeded with the petition filed on 07.04.2001, long prior to the grant, which was rejected vide Ext.P7. Again, the petitioner challenged Ext.P7, in which there was a remand order made. On remand, the District Collector again took up the petition on 17.04.2001 and reiterated the earlier order that the grant has already been approved by the District Collector as on 31.07.2001.

10. The grant having been not challenged by the petitioner, the petitioner could raise no valid contentions against the grant in a petition filed independently of the grant. The cancellation was challenged alleging that the petitioner did not ask for revocation of licence, but only sought for temporary arrangement due to his temporary illness. The petitioner cannot take such a stand as has already been held by this Court, since there is no right conferred on a licensee to seek for temporary arrangement. On facts too the petitioner cannot raise any sustainable grounds against the revocation. As to the grant of licence to the 5th respondent, in addition to that having been never challenged, it is also to be noticed that the petitioner has no sustainable ground against the grant as such, but for the challenge against the revocation.

The writ petition hence would stand dismissed.

Sd/-

**K. VINOD CHANDRAN,
JUDGE**

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