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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (C) No. 3751 of 2019

Durg Zila Thok Upbhokta Sehkari Bhandar Durg Through Its Chief Executive Officer Shri Nirmal Kumar Verma, S/o Late Shri Jhabbu Lal Verma, Aged About 60 Years, R/o Shubham Kunj, Surya Nagar Sikola Bhata, Durg, Chhattisgarh.

--- Petitioner(s)

Versus

1. State of Chhattisgarh Through Secretary, Department of Food Supplies And Consumer Protection, Mahanadi Bhawan, Mantralaya New Raipur, District Raipur, Chhattisgarh.
2. The Directorate of Food Civil Supplies and Consumer Protection Block -2 3rd Floor Indravati Bhawan, Mantralaya New Raipur, District Raipur, Chhattisgarh.
3. The Collector (Food) Collectorate Office Durg, District Durg, Chhattisgarh.
4. The Commissioner Civil Supplies and Consumer Protection Department, Directorate Civil Supplies and Consumer Protection, Block- 2 3rd Floor Indravati Bhavan Atal Nagar, Raipur, District Raipur, Chhattisgarh.
5. Food Controller Durg, District Durg, Chhattisgarh.

---Respondents

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Writ Petition (C) No. 3764 of 2019

Durg Vipnan Sehkari Samiti Maryadit Durg, Through Its Manager Shri Hemnath Dewangan, S/o Late Shri Chandu Lal Dewangan, Aged About 57 Years, R/o Subhash Nagar Durg, District Durg, Chhattisgarh.

--- Petitioner(s)

Versus

1. State of Chhattisgarh Through Secretary, Department of Food Supplies And Consumer Protection, Mahanadi Bhawan, Mantralaya New Raipur, District Raipur, Chhattisgarh.
2. The Directorate of Food Civil Supplies and Consumer Protection Block -2 3rd Floor Indravati Bhawan, Mantralaya New Raipur, District Raipur, Chhattisgarh.
3. The Collector (Food) Collectorate Office Durg, District Durg, Chhattisgarh.
4. The Commissioner Civil Supplies and Consumer Protection Department, Directorate Civil Supplies and Consumer Protection, Block- 2 3rd Floor Indravati Bhavan Atal Nagar, Raipur, District Raipur, Chhattisgarh.
5. Food Controller Durg, District Durg, Chhattisgarh.

---Respondents

For Petitioners	:	Shri B.P. Singh, Advocate
For State	:	Shri Chandresh Shrivastava, Dy. A.G. and Ms. Sunita Jain, Government Advocate.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

21.10.2019

1. Since the issues raised and the orders impugned being common in both the writ petitions, both the writ petitions are being disposed of by this common order.
2. The basic challenge in these writ petitions is to the order dated 20.08.2019 (Annexure P/2) and the consequential memo dated 27.08.2019 (Annexure P/1) issued by the respondents No.4&5 respectively.
3. The case of the petitioners is that, the petitioners had been allotted fair price shops way back in the year, 2001 by the respondents and they were operating shops since then continuously and uninterruptedly. The contention of the petitioners is that, the petitioners have engaged large number of employees and who have become regular employees of the petitioners-establishment and who are solely dependent upon the fair price shops which are being run by the petitioner's agency. The fair price shops were allotted to the petitioners when infact there was no specific limit of the number of fair price shops that a single agency could operate at a single time. However, under Chhattisgarh Public Distribution System (Control) Order, 2004, and the subsequent Control Order i.e. Chhattisgarh Public Distribution System (Control) Order, 2016, there is a cap put by the respondents so far as the number of fair price shops which could be operated by a single agency. The upper limit fixed by the State authorities in these two Control Orders are 3 fair price shops.
4. Admittedly, the petitioners have got more than 3 fair price shops operating in District Durg. The contention of the petitioner is that, since they were allotted these fair price shops at a time when there was no limit and now when they are asking to surrender the fair price shops over and above 3,

an opportunity of hearing ought to have been granted to the petitioners so that they could have given their explanation in this regard. In the absence of which, the action on the part of the respondents in taking steps for closure of the fair price shops of the petitioners in excess of 3 is bad in law.

5. Further contention of the petitioners is that, as a consequence of closing down of the fair price shops in excess of 3 so far as petitioner's society is concerned, that can have a far reaching adverse consequence on the employees engaged by the petitioners, as many of them would be rendered jobless which would not be in the larger public interest. Moreover, the contention of the petitioners is that, there is no allegation against the petitioner's society for having misused the fair price shops or having committed any breach of the orders passed by the State Govt. in the process of running fair price shops. This also should be born in mind by the authorities concerned before taking steps forcing them to close down their fair price shops in excess of 3.
6. However, perusal of record would show that there does not seem to be any objection/appeal/representation made by the petitioners to any of the higher authorities in the department against the order dated 20.08.2019 (Annexure P/2) and memo dated 27.08.2019 (Annexure P/1). It is by now almost about two months from the date the impugned order and the memo that have been issued.
7. Given the said facts, this court is of the opinion that prima facie the memo as well as the order do not seem to be in contravention to the Control Order of 2004 or for that matter the Control Order, 2016. However, since the petitioners were allotted these fair price shops even before Control Orders of 2004 and 2016 had come into force, it would be in the interest of justice if the petitioners are granted an opportunity to approach the

respondent No.1, the State Govt. as also the respondent No.4, the Commissioner, Civil Supplies and Consumer Protection Department by way of a representation/objection within a period of 10 days from the date of receipt of copy of this order. The respondents No.1&4 thereafter shall consider the contents of the objection which the petitioners shall raise, and take an appropriate decision taking the entire facts and circumstances of the case into consideration that the petitioners would raise in their objection/representation. It is expected that the authorities shall take a decision at the earliest.

8. Till the authorities take a final decision on the objection/representation, if any, filed by the petitioners within a period of 10 days from the date of receipt of copy of this order, it is directed that no co-ercive steps be taken against the petitioners arising out of Annexure P/1, dated 27.08.2019 and Annexure P/2, dated 20.08.2019.
9. With the aforesaid observations/directions, both the writ petitions stand disposed of.

Sd/-
(P. Sam Koshy)
Judge

inder