

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (C) No. 2121 of 2020

Jai Sai Baba Prathmik Sahakari Upbhokta Bhandar Kathiya, Kurud, District Bemetara Through Its President Anil Kumar Sahu S/o Shri Shobhit Ram Sahu, Aged About 42 years, R/o Gram Panchayat Kathiya, Post Ranka, Tahshil Berla , District Bemetara Chhattisgarh.

---Petitioner(s)

Versus

1. State of Chhattisgarh Through The Secretary, Food, Civil Supplies and Consumer Protection Department , Mahanadi Bhawan, Atal Nagar, Nawa Raipur , District Raipur Chhattisgarh.
2. Special Secretary Food, Civil Supplies and Consumer Protection Department , Mahanadi Bhawan, Atal Nagar, Nawa Raipur , District Raipur Chhattisgarh.
3. Commissioner Cum Director Food, Civil Supplies and Consumer Protection Department, Block 2, 3rd Floor Indrawati Bhawan, Atal Nagar, Nawa Raipur , District Raipur Chhattisgarh.
4. The Collector Bemetara District Bemetara Chhattisgarh.
5. Food Controller Bemetara, District Bemetara Chhattisgarh.
6. Sub Divisional Officer (Revenue) Berla , District Bemetara , Chhattisgarh.

---Respondents

For Petitioner	:	Shri Anand Dadariya, Advocate.
For Respondent-State	:	Shri Mateen Siddique, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

14.09.2020

1. The grievance of the petitioner in this petition seems to be an advertisement which has been issued by the respondent-Sub Divisional Officer (R), Berla (Annexure P/2) seeking application for fresh allotment of fair price shops having ID Nos. 432011015, 432011017, 432011020 and 502011084. The challenge in the present writ petition also is to the circular dated 22.06.2020 (Annexure P/1) to the extent of capping of 3 shops under clause Nos. 2.1 and 2.2 of the said circular dated 22.06.2020 under the Control Order, 2016.
2. The contention of the petitioner firstly is that the petitioner have got 5 fair price shops, 4 of which ID is already provided in the preceding paragraphs and the 5th shop is that having ID No.432011019. According to the

petitioner, since the circular provides for an upper limit of 3 fair price shops that an agency can operate and if the petitioner have got 5 shops, it is only 2 shops which could have been advertised by the respondents. However, in the instant case they have issued an advertisement for 4 shops which is contrary to the circular as also contrary to the Control Order, 2016 itself. The further contention of the petitioner is that, 4 of the shops out of 5 have been allotted prior to 2006 i.e. in the year, 2004 to be precise, and in the Control Order of 2004 there was no such upper limit for having fair price shops and any subsequent amendment or new Control Orders which are introduced by the authorities, the effect of it would only be prospective. It cannot have a retrospective effect to the extent of making it applicable upon all those agencies which are having more than 3 shops even before the Control Order 2004 was amended or before the 2016 Control Order was introduced.

3. However, perusal of the writ petition would show that the original allotment order issued to the petitioner have not been filed by the petitioner in this writ petition. Thus, this court find it difficult to ascertain whether the petitioner had been substantively allotted these shops as original allottees or not. It would be a subject matter of verification. As regards government policy is concerned, admittedly as of now the policy, as it stands, provides for an upper limit of 3 shops for any agency which they could operate. If that be so, the petitioner would have had an opportunity of choosing to retain 3 shops and surrendering 2 shops. There does not seem to have been any steps taken on the part of the respondents in giving an option to the petitioner as to which of the 3 shops they intend to keep and which are the shops they intend to surrender. It also does not reveal from the pleadings that the respondents had initiated any steps in cancelling the allotment, if

any, made to the petitioner before going in for advertisement published now vide Annexure P/2. All these aforesaid facts are all matter of scrutiny and verification to be done at the respondent's level.

4. Given the said facts, this court is of the opinion that it would be in the interest of justice to grant an opportunity to the petitioner to approach the respondent No.2 by making a representation so far as his claim of the Control Order 2016 and the amendment of the 2004 Control Order being prospective in nature and that the petitioner would not be affected by the said amendment. The petitioner also is permitted to make a representation to the respondent No.4 so far as the advertisement Annexure P/2 which has been issued without giving any notice to the petitioner as to which all shops he intends to retain and which he intends to surrender beyond the upper limit of 3 shops which is permissible under the Control Order 2016.
5. Subject to petitioner's making a representation to the respondents No.2&4 within a period of 10 days from today, the respondents No.2&4 are expected to consider and decide the same at the earliest on its own merits preferably before finalizing the advertisement, Annexure P/2. It is made clear that this order shall loose its efficacy so far as the representation to be made to the respondent No.4, in case if till today the advertisement has not been finalised and third party right created.
6. With the aforesaid observations, the writ petition stands disposed of.

Sd/-
(P. Sam Koshy)
Judge