

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPC No. 3061 of 2019**

1. Lata Mahila Swa Sahayata Samooch Radhika Nagar Shop, Id.No. 431004009 Ward No 4, Supela Bhilai, Through President Smt. Pramila Yadav W/o Uday Shankar Aged About 45 Years, R/o Bhilai District Durg Chhattisgarh
2. Lallan Yadav S/o Late Natha Yadava Aged About 45 Years R/o Camp No 1, Adarsh Nagar Bhilai Salesman, Lata Mahila Swa Sahayata Samooch Radhika Nagar Shop, Id.No. 431004009 Ward No 4, Supela Bhilai, Tahsil And District Durg Chhattisgarh

---- Petitioners**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of Food And Civil Supplies, Mantralaya, Mahanadi Bhawan Atal Nagar Raipur District Raipur Chhattisgarh
2. Food Controller Durg District Durg Chhattisgarh
3. Collector (Food) Durg District Durg Chhattisgarh
4. Additional Collector Durg District Durg Chhattisgarh
5. Jai Ma Laxmi Devi Darshan Mahila Sahayata Samooch Laxmi Nagar Shop, id No. 431004010, Ward No 4 Through President Smt. Lila Devi, Laxmi Nagar, Supela, Bhilai, District Durg Chhattisgarh.
6. Shri Sunder Lal S/o Godu Salesman, Jai Ma Laxmi Devi Darshan Mahila Sahayata Samooch Laxmi Nagar Shop, Id No 431004010, Ward No 4, R/o Laxmi Nagar Supela Bhilai District Durg Chhattisgarh

---- Respondents

For Petitioners	:	Mr. Uttam Pandey, Advocate
For State	:	Mr. Jitendra Pali, Dy. A.G.
For Respondent No.5	:	Mr. Vipin Tiwari, Advocate

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

16/06/2020

1. The challenge in the present writ petition is to the order Annexure P/1, P/4 and P/2 and P/3. Annexure P/1 is an order dated

02.07.2019 passed by the Additional Collector District Durg whereby an application for review of the order dated 19.03.2019 passed by the same authority stood rejected. Annexure P/4 is an order passed by the Additional Collector whereby the appeal preferred by the petitioners challenging the order of the District Food Controller has been rejected. Annexure P/3 dated 06.06.2018 is an order passed by the district Food Controller cancelling the allotment of the fair price shop to the petitioners with ID number 431004009. P/2 is also an order passed by the District Food Controller in respect of another society in an identical matter wherein he has passed an order vide order dated 24.06.2019 whereby the authority has passed revocation of the suspension order and has imposed a fine of Rs.5000/. for the same set of allegations and misconduct as alleged against the petitioners.

2. The brief facts relevant for the adjudication of the dispute involved in the present writ petition is that, the petitioner No.1 is a society operating a fair price shop with ID number 431004009 and petitioner No. 2 is a salesman of the said fair price shop. It is said that a complaint was made by one Kanhai Sahani making allegations against his brother Shankar Sahani to the extent that the said Shankar Sahani was able to obtain about five ration cards fraudulently prepared and further food stuffs were being collected from the petitioners fair price shop and also from another fair price shop against the said ration cards.
3. It was alleged that the petitioners also had connived and conspired in the release of food articles under the public distribution system

on the aforesaid fake ration cards issued fictitiously. The nature of allegation against Shankar Sahani by his brother Kanhai Sahani was that of managing to obtain fake ration cards issued in the name of his mother Ganga Bai and against which food articles were got released from the fair price shop operators including the petitioners.

4. It appears that show cause notice was issued to the petitioners on 11.05.2018, to which the petitioners submitted a reply on 21.05.2018. The petitioners also appeared before the District Food Controller District Drug on 21.05.2018 and from the order Annexure P/3 it reflects that the proceedings was closed by the district Controller of Foods on the very same day and thereafter the order was passed on 06.06.2018. The petitioners immediately preferred an appeal before the District Collector Durg and the appeal was later on marked to the Additional Collector, who in turn rejected the appeal on 19.03.2019. Subsequently the petitioner. preferred a review petition before the Additional Collector himself, seeking review of the order dated 19.03.2019, on the ground that there were certain material omissions and certain factual aspects which have not been properly considered by the Additional Collector while deciding the appeal at the first instance. It is this review petition which has been rejected vide Annexure P/1 dated 02.07.2019 and which is under challenge along with the other orders Annexures P/3 and P/4 in this writ petition.
5. The challenge to the aforesaid orders by the petitioner is firstly the rejection of the review petition only on the ground of the order against which review has been sought being an appealable order. It

was contended that once the petitioners had preferred a review petition before the Additional Collector they were duty bound to decide the review petition on merits. According to the petitioner, the Additional Collector should have considered whether there is any merit in the review petition and if it had merits the authority should have considered and decided the same, on the contrary if the review petition did not have any merits the same could have been rejected on the ground that no strong ground for review has been made out. It was vehemently contended that just because there is a provision of an appeal to an order does not mean that the authority who has passed the order cannot and should not entertain a review application seeking review, filed by an aggrieved person.

6. So far as the merit of the case is concerned the contention of the petitioners what is that the order dated 06.06.2018 was passed in a mechanical manner without application of mind, without recording of evidence, without conducting even a preliminary enquiry so far the allegations that have been made or as regards the alleged misconduct on the part of the petitioners. It was further contended by the petitioner, that the Food Controller has passed the order only on the basis of the explanation to the show cause notice that the petitioners have submitted and have not even cared to call upon the complainant to adduce evidence to establish the allegations and more particularly the fault on the part of the petitioners. It was also the contention that the alleged beneficiary from the so-called fake ration card namely Smt. Ganga Bai also was not examined to find out whether there was any fault on the part of the petitioners or not

and whether the said Ganga Bai did receive any food materials from the petitioners fair price shop or not. The challenge to the action on the part of the department was also on the ground of discrimination being shown by the District Food Controller while passing Annexure P/3 dated 06.06.2018. According to the petitioners as was the allegations made against the petitioners a similar allegation was also leveled against another society bearing ID number 431004010 by the name of Jai Ma Laxmi Devi Darshan Mahila Swa Sahayata Samhu. Against the said society also the allegation was identical in nature the complainant also was the same and the nature of complaint also same. However after receiving the explanation from the said society the District Controller vide his order dated 24.06.2019 Annexure P/2 imposed only a fine of Rs.5000/- and thereafter revoked the suspension order and permitted the said society to continue operating the fair price shop allotted to them, whereas on the same set of facts the District Controller took an extreme and harsh action of cancelling the allotment of the fair price shop to the petitioners which is thus discriminatory and violative of Article 14. For all the aforesaid reasons counsel for the petitioners prayed for quashment of the impugned orders and restore the fair price shop which was earlier allotted to the petitioners.

7. Opposing the petition the learned State counsel submitted that the order passed by the District Controller would clearly reveal that the said order was passed after a fair and reasonable opportunity of hearing was given to the petitioners. It was also the contention of

the State Counsel that from the explanation that the petitioners have submitted before the District Controller it was established that food materials in fact have been released to persons against the said fake ratio cards and the same was also released in contravention to the rules and guidelines governing the public distribution system. It was also the contention of the state counsel that against the impugned orders the petitioner had a remedy of preferring an appeal before the state government and therefore on availability of an alternative remedy under the rules and guidelines the writ petition at this juncture would not be maintainable. For the same reason the Additional Collector has rightly rejected the review petition also and which also therefore does not warrant interference at this stage.

8. Having heard the contentions put forth on either side and on perusal of record it would be relevant at this juncture to first peruse through the contents of the impugned order Annexure P/1 dated 02.07.2019 passed by the Additional Collector rejecting the review petition. The short order of the Additional Collector is reproduced here in under :-

“प्रकरण प्रस्तुत।

प्रकरण अपर कलेक्टर दुर्ग के खाद्य प्रकरण क्रमांक 28/G-121/2017-18 में पारित आदेश दिनांक 19.03.2017 से क्षुब्ध होकर पुनर्विलोकन हेतु आवेदन प्रस्तुत किया है। अतः उक्त पारित आदेश के विरुद्ध सक्षम न्यायालय में अपील प्रस्तुत करने का प्रावधान होने के कारण आवेदक का पुनर्विलोकन आवेदन अस्वीकार किया जाता है।

प्रकरण नस्तीबद्ध कर दाखिल दफ्तर हो।”

9. From the plain reading of the aforesaid order it clearly reflects that the review application has been rejected only on the ground of the order against which review has been sought being an appealable

order. What has to be understood is that the scope of review is entirely different than the scope of interference in an appeal. The power of review upon an authority is inherent, which in other words means that even if the statutes do not provide for review power upon an authority even then having quasi judicial authority is vested with powers to review his own order on an application being made in this regard.

10. The inherent jurisdiction of an authority the source of power is there as a residual source of power. If an aggrieved person feels that there is an error apparent on the face of record or certain facts which has not been properly appreciated he has a right to seek for a review of the order passed against which he is aggrieved off. Upon such an application being filed the concerned authority is expected to take a call by deciding whether the review petition is worth entertaining or not in as much as whether there is any merit in the review application or not. The authority is duty-bound to decide the said application on merits irrespective of the outcome. That is say that the review petition can either be allowed or may reject the same holding it to be devoid of merit. The authority cannot refuse to entertain a review application only on the ground of there being a provision for appeal against the order of which review is being sought. The rejection of the review petition by the Additional Collector on the sole ground of there being an alternative remedy of appeal available to the petitioner is therefore not sustainable in the eyes of law and the impugned order Annexure P/1 therefore deserves to be and is accordingly set aside/quashed.

As a consequence impugned order of Annexure P/1 stands quashed and the matter stands remitted back to the Additional Collector district Durg to decide the review petition on merits afresh.

11. Since the impugned order Annexure P/1 is being set aside on the technical ground this court has not ventured into the merits of the case and is being left for the authorities to take a decision on the review application subject to the power of review however reserving the right of the petitioners to challenge the outcome including on its merits if the need so arises at the later stage.
12. Accordingly the writ petition stands partly allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Ved