

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

632

CWP-18965-2007 (O&M).

Date of Decision: 12.05.2023.

DEEP CHAND

.. Petitioner

Versus

THE STATE OF HARYANA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. D.C. Mittal, Advocate,
for the petitioner.

Mr. Vivek Chauhan, Addl. A.G. Haryana.

VINOD S. BHARDWAJ, J. (ORAL)

This writ petition had been filed for seeking quashing of the impugned orders dated 09.08.2006 and 18.12.2006 (Annexures P-5 and P-6) respectively on the ground that the same are illegal, arbitrary and in violation of the Article 20 (2) of the Constitution of India.

Briefly summarized, the grievance of the petitioner is that he was appointed as an authorized depot holder for distribution of ration in village Moond. The license system was thereafter introduced and keeping in view the performance of the petitioner, he was granted the license for running a ration depot in the said village. The petitioner claims to have been duly distributing the ration in terms of the obligations imposed, to the card holders sincerely. However, some persons who are alleged to be nursing a grudge against the petitioner submitted a complaint against him for which an enquiry was conducted by the Assistant Food and Supply Officer (hereinafter referred to as 'AFSO') and the substantive allegations were

found to be not established and only minor irregularities were noticed to the effect that some cardholders' ration for the months of April, 2006 was delivered in the month of May, 2006. The petitioner tendered his explanation for the same that on account of solemnization of marriage of his daughter on 27.04.2006, the aforesaid anomaly had occurred. The aforesaid statement of the petitioner was supported by various residents of the village. It is also stated that certain other residents of the village also made statements that the petitioner had been duly supplying the ration under their supervision and without any default. A report was thereafter submitted on 12.05.2006 (Annexure P-1).

Upon consideration of all the relevant circumstances and noticing that the default in question was minor, for which a sufficient explanation has already been rendered, a penalty of forfeiture of security amount of Rs.1000/- was imposed on the petitioner by respondents No.3 – i.e. the District Food and Supplies Controller, Karnal (hereinafter referred to as 'DFSC') vide order endorsed on 31.05.2006. A challan No.33 dated 01.06.2006 was filled up by the petitioner and the said amount was also deposited.

The petitioner, however, was served with another show-cause notice dated 30.06.2006 whereupon the respondents initiated a fresh proceeding qua the same allegations regarding which the penalty had already been imposed. An ex parte enquiry was claimed to have been conducted and a report was submitted on 22.06.2006. The allegations related to delayed distribution of the ration for the month of April 2006 qua which the enquiry had already been conducted by the AFSO and penalty had also been imposed by the DFSC Karnal. Pursuant to the receipt of the

show-cause notice, petitioner furnished his reply wherein he informed that the said issue has already been examined and that the matter had attained finality and ought to be closed. However, the submissions of the petitioner notwithstanding, vide impugned order dated 09.08.2006, the DFSC passed the order in exercise of Section 5 (1) of the Public Distribution System Order 2002 and cancelled the license awarded to the petitioner.

Aggrieved thereof, an appeal was preferred by the petitioner before the Deputy Commissioner, Karnal bearing Case No.52/Misc/DC. However, the said appeal was also dismissed vide order dated 18.12.2006. Hence, the present petition.

Upon notice, written statement on behalf of the respondents has been filed wherein it was averred that initially a complaint dated 03.05.2006 was received by the respondents from one Sewa Singh son of Ram Dhari whereupon an enquiry was conducted through the AFSO, Asandh and the report dated 12.05.2006 was submitted by him. Certain minor irregularities having been found, the forfeiture of security was ordered. Thereafter, another complaint dated 19.06.2006 was received from Sewa Singh and others of village Moond wherein they have alleged that no action had been taken against the petitioner in the complaint submitted by them earlier and that there were serious allegations in the complaint against the depot holder (petitioner herein). Another enquiry was hence got conducted through the AFSO whereupon it transpired that there was misappropriation of 60 liters of kerosene oil, 1.75 quintals of BPL (Below Poverty Line) wheat, 70 kg rice of BPL and 2.80 quintals of AAY (Antodya Anna Yojna) wheat. The said enquiry report was submitted on 23.06.2006 and finding serious irregularities against the petitioner, a fresh show-cause

notice dated 30.06.2006 was issued and the petitioner was called for personal hearing on 13.07.2006 as well as on 25.07.2006. The petitioner chose not to appear, whereupon a last opportunity was granted. Upon the petitioner not turning for hearing, the report was considered and the impugned order cancelling the license was passed. All other averments remained undisputed.

Learned counsel appearing on behalf of the petitioner argued that the same complainant, along with others, had earlier also submitted a complaint to the DFSC whereupon the enquiry was duly conducted and the said enquiry report having been filed with the DFSC, a penalty was imposed by the competent Authority directing forfeiture. The allegations of the card holders about the alleged misappropriation of the wheat grain was also examined by the AFSSO and it was specifically reported by the AFSSO that there was no complaint qua the embezzlement/misappropriation of the food grains and kerosene by the petitioner. It was also recorded that there was some false entry of 40 kg. BPL rice, 1.00 BPL wheat, 20 litre Kerosene oil. On physical verification at the spot the stock was found as per record. The rate list was affixed but the same was not filled up. It is thus contended that the aforesaid allegations stood enquired into and a report was received.

So far as the issue pertaining to the distribution of ration to the card holders including yellow and pink card holders regarding kerosene oil and rice etc. is concerned, no such charges were found to be established and that certain other minor shortcomings were noticed. The physical verification of the stock was also conducted whereupon the penalty was imposed and the said penalty has attained finality. However, a subsequent complaint was also submitted by the residents expressing dissatisfaction

that no action had been taken on the complaint submitted earlier. He submits that instead of apprising that an action had already been taken against the depot holder, a fresh departmental enquiry was ordered to be conducted and penalty has been imposed afresh qua the same very incident, without giving any reasons for ignoring the earlier enquiry report and without taking into consideration that punishment for the lapses already stood imposed. It is further contended that the petitioner had never been associated with the subsequent enquiry and he has been condemned unheard. There was no occasion for imposing a second punishment for the same cause of action.

Per contra, counsel for the respondents-State contends that the punishment of cancellation of the depot license was imposed after a report had been submitted by the AFSO. A shortfall was noticed by the AFSO and a show-cause notice was duly served upon the petitioner before imposition of penalty. He further contends that the competent Authority has rightly passed the impugned orders. The other facts pleaded and argued are not disputed by the respondent State.

I have heard the learned counsel appearing for the respective parties and have also gone through the documents appended along with the present petition.

The following uncontroverted facts emerge from a perusal of the documents that have come forth:-

- (i) That both the complaints in question were authored by Sewa Singh and certain other residents of the village.
- (ii) An enquiry on the complaint dated 03.05.2006 submitted by complainant Sewa Singh was conducted and a report was

furnished by the AFSO on 12.5.2006. The punishment of forfeiture of security of Rs.1000/- was thereafter imposed by the DFSC on 31.05.2006 and the said amount was also deposited by the petitioner on 1.06.2006 vide challan No.33.

- (iii) The second complaint was submitted by Sewa Singh along with certain other persons on 19.06.2006 after the aforesaid order had already attained finality. The grievance raised therein was that no action had been taken on the complaint submitted against the petitioner. The respondent No.3-DFSC proceeded to depute AFSO to conduct a fresh enquiry notwithstanding that the substratum of allegations remained the same. It is thus necessary to extract the finding of both the reports that had been so furnished. The extract of the report dated 12.05.2006 submitted by the AFSO, Asandh is reproduced hereinafter below:-

“1. By visiting Village Moond and going around at various places in the whole Village and contacting the Card Holders, statements of 76 card holders (APL, BPL, AAY) regarding distribution of ration were recorded. Out of whom 59 Card holders, which mostly consists of yellow and pink cards, informed that they were getting wheat, kerosene oil, rice etc. every month in time from Deep Chand Depot Holder Village Moond. The Depot Holder distributes ration in the village after getting conducted munadi in the Village. They have no complaint against the depot holder.

2. 6 Card Holders informed that they got the ration for the month of 4/06 in 5/06. The depot holder has submitted in writing that on 27.4.06 the marriage of his daughter was

performed, due to which he could not distribute ration to some of the card holders. But immediately thereafter in the start of May, 06, they were supplied ration for the month of 4/06 and the entries of the same were made for the month of 4/06.

3. 11 Card Holders stated that they have not received ration for the month of 4/06 nor the same is entered in the column of month 4/06 in their ration cards. On comparing with the sale register, out of these cards, 4 cards were found entered in the sale register. Therefore, the depot has made a false entry of 40 Kg. BPL rice, 1.00 BPL wheat, 20 Itr. kerosene oil.

4. During checking, the depot was inspected. On physical inspection at the spot, stock of wheat, rice, kerosene oil was found as per record. Though rate and stock board was affixed but the same was not filled up Submitted for information and necessary action.”

The extract of the enquiry submitted on 30.6.2006 conducted by the AFSO, Asandh and noticed by the DFSC is extracted as under:-

“Enquiry of the same was conducted by Assistant Food & Supplies Officer, Assandh vide letter No.Spl.01 dated 23.6.2006. The Assistant Food & Supplies Officer vide his letter No. Spl.01 dated 23.6.2006 has reported that on 22.6.2006 enquiry has been conducted regarding distribution of ration by you for the month of April & May, 2006, Five Card holders out of which 3 are BPL and 2 AAY Cards, have informed that they have received ration for the month of April in the month of May, 2006, whereas, as per Govt. instructions the ration was liable to be distributed to the Card Holders in the same months. 5 Card Holders have informed that they have not received ration for both the months. There was no entry to that effect in their ration cards. 22 BPL/AAY Card Holders

have stated that they have received ration in the month of April, 2006. All these 22 cards contains entry in the column of April, 2006, but making the statements of Card Holders as basis, on comparison with sale register, 12 cards are shown to have been distributed Kerosene oil.

7 BPL Cards are shown to have been given wheat and rice. 8 AAY cards are shown to have been given wheat. In this way you have misappropriated 60 liters Kerosene oils, 1 Qtl. 75 Kg. wheat of BPL Cards and 70 Kg. BPL rice and 2 Qtl. 80 Kg. wheat of AAY.”

- (iv) It is evident from a perusal of the above that the period qua which the enquiry was conducted was in fact the same period i.e. the month of April and May 2006.
- (v) It is also stated by respondents that the second complaint expressed dissatisfaction that no action has been taken on the complaint submitted earlier. Such a letter cannot be labeled as a fresh complaint and is at best a reminder to the complaint sent earlier. Hence, it did not give rise to any fresh cause of action or reason to conduct any fresh departmental enquiry in a matter that had already been finalized amongst the parties.
- (vi) Further the allegations regarding the alleged embezzlement/ misappropriation and/or late delivery of ration to card holders had been duly enquired into by the AFSO, Asandh as per his report bearing No.630 dated 12.05.2006. Once all the said aspects had already been enquired into and a report furnished and an order of punishment passed, there was no occasion or reason for the same Authority i.e. the DFSC to direct a fresh

enquiry into the same allegations. Surprisingly, the DFSC Karnal, did not even refer to the enquiry earlier conducted by AFSO Asandh as well as the order of punishment dated 12.05.2006 passed on the basis of the report furnished by the AFSO Asandh.

(vii) At the same time, even though the enquiry was conducted by the same officer i.e. AFSO Asandh, and the report was submitted on 23.6.2006, however, he also chose not to inform about the earlier report that had been submitted. The Authorities also committed irregularities in not associating the petitioner at the time of submission of the subsequent enquiry report dated 23.6.2006. Had the petitioner been associated, the imposition of the said punishment could have been informed by the petitioner. During the course of the show cause notice and personal hearing granted to the petitioner, the aforesaid aspect was pointed out, however, the Authorities chose to turn a blind eye on the said legal issue which went to the root of the matter and did not even refer to it.

(viii) Evidently, both the Authorities failed to take into consideration that the allegations in questions already stood enquired into and a punishment had been imposed which such punishment had already attained finality. There is nothing on record on the basis whereof it may be construed that the earlier enquiry report was not accepted by the punishing Authority and that the DFSC directed a fresh enquiry to be conducted by any other officer. Once the said enquiry report had already been accepted

and attained finality, there was no reason or occasion for conducting a fresh enquiry into the same allegations and thereafter to impose a fresh punishment for the same cause of action. The same invariably amounts to causing prejudice to the petitioner and vexing him twice for the same irregularities. The respondent Authorities failed to take note of the aforesaid irregularity despite the same having been pointed out by the petitioner at the time when the first show cause notice had been issued to him. The impugned orders are completely silent on the said aspect.

I thus find that the impugned orders dated 09.08.2006 and 18.12.2006 (Annexures P-5 and P-6) are hit by Article 20 (2) of the Constitution of India as no person can be vexed twice for the same irregularities/illegalities. The impugned orders are thus bad and liable to be set aside. The petition is accordingly allowed and the impugned orders dated 09.08.2006 and 18.12.2006 (Annexures P-5 and P-6) respectively are set aside.

The petitioner, however, would be entitled to avail the restoration of the license subject to his fulfilling the eligibility as may be notified by the State Government. The above orders dated 09.08.2006 and 18.12.2006 shall not stand in the way of restoration, if all other conditions are satisfied.

May 12, 2023
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No