

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF SEPTEMBER, 2021

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO.31247 OF 2016 (GM-PDS)

BETWEEN:

K GOPAL,
AGED ABOUT 50 YEARS,
S/O KEMPANNA,
R/O GANGAWARA,
CHOWDAPPANAHALLI VILLAGE,
CHANNARAYAPATNA HOBLI,
DEVANAHALLI TALUK,
BANGALORE RURAL DISTRICT - 562 110.

...PETITIONER

(BY SRI.SHIVARAMA H C, ADVOCATE)

AND:

1. THE DEPUTY COMMISSIONER,
BANGALORE RURAL DISTRICT,
BANGALORE - 560 001.
2. THE TAHSILDAR,
DEVANAHALLI TALUK,
DEVANAHALLI,
BANGALORE RURAL DISTRICT - 562 110.
3. VIVASAYA SEVA SAHAKARA SANGHA NIYAMITHA,
BHOODIGERE VILLAGE,
DEVANAHALLI TALUK,
BANGALORE RURAL DISTRICT - 562 110.
REPRESENTED BY ITS SECRETARY

....RESPONDENTS

(BY SRI. VINOD KUMAR M, AGA FOR R1 & R2;
R3 SERVED AND UNREPRESENTED)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DATED 31.3.2016 PASSED BY THE R-1 VIDE ANNEX-G1 AND ETC.,

THIS PETITION COMING ON FOR PRELIMINARY HEARING IN B GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner, a fair price shop licensee, is knocking at the doors of Writ Court for assailing the order dated 31.03.2016 made by the first respondent at Annexure-G and the consequent Official Memorandum dated 4.5.2016 at Annexure-G2 whereby Ration Cards are diverted to another Fair Price Depot.

2. The operative portion of Annexure-G1 reads as under:

“ಆದೇಶ ಸಂಖ್ಯೆ:ಉನಿ(ಅ)/ಬೆಂ.ಗ್ರಾ/ಜಿ/**DRA/35/201-16.**
ದಿನಾಂಕ:31-06-2016.

ಶ್ರೀ.ಎಸ್.ಪಾಲಯ್ಯ, ಭಾ.ಆ.ಸೆ., ಜಿಲ್ಲಾಧಿಕಾರಿಗಳು ಮತ್ತು ಜಿಲ್ಲಾಧಂಡಾಧಿಕಾರಿ, ಬೆಂಗಳೂರು ಗ್ರಾಮಾಂತರ ಜಿಲ್ಲೆ, ಆದ ನಾನು ನನಗೆ ದತ್ತವಾಗಿರುವ ಅಧಿಕಾರವನ್ನು ಚಲಾಯಿಸಿ ಕೆ.ಗೋಪಾಲ ನ್ಯಾಯಬೆಲೆ ಅಂಗಡಿ ಇವರ ವಿರುದ್ಧ ಗಂಗವಾರ ಚೌಡಪ್ಪನಹಳ್ಳಿ ಪಡಿತರ ಚೀಟಿದಾರರು ನೀಡಿರುವ ದೂರು ಸತ್ಯಾಂಶದಿಂದ ಕೂಡಿರುವುದಾಗಿ ಕಂಡು ಬಂದಿರುವುದರಿಂದ ಪಡಿತರ ಚೀಟಿದಾರರ ಹಿತದೃಷ್ಟಿಯಿಂದ ಚೌಡಪ್ಪನಹಳ್ಳಿ ಹಾಗೂ ಗಂಗವಾರ ಈ ಎರಡೂ ಗ್ರಾಮಗಳಲ್ಲಿನ ಒಟ್ಟು 642 ಪಡಿತರ ಚೀಟಿಗಳಿಗೆ ತಾತ್ಕಾಲಿಕವಾಗಿ ಹಾಗೂ ಮುಂದಿನ ಆದೇಶದವರೆವಿಗೆ ವಿ.ಎಸ್.ಎಸ್.ಎಸ್.ಎನ್ ಬೂದಿಗರೆ ಈ ನ್ಯಾಯಬೆಲೆ ಅಂಗಡಿಗೆ ನಿಯೋಜಿಸಲಾಗಿರುತ್ತದೆ. ವಿ.ಎಸ್.ಎಸ್.ಎಸ್.ಎನ್ ಬೂದಿಗರೆ ಇವರು ಗಂಗವಾರ

ಚೌಡಪ್ಪನಹಳ್ಳಿ ಗ್ರಾಮದಲ್ಲಿ ಮಳಿಗೆ ತೆರೆದು ಪಡಿತರ ವಿತರಿಸಲು ಆದೇಶಿಸಿದೆ. ಈ ಆದೇಶವು ತಕ್ಷಣದಿಂದ ಜಾರಿಗೆ ಬಂದಿರುತ್ತದೆ.”

3. The operative portion of impugned Official Memorandum dated 4.5.2016 at Annexure-G2 reads as under:

“ಅದುದರಿಂದ ಗಂಗವಾರ ಚೌಡಪ್ಪನ ಹಳ್ಳಿಯಿಂದ ಸುಮಾರು 2 ಕಿ.ಮೀ ಅಂತರವಿರುವ ಕೊಂಡೇನಹಳ್ಳಿ ಗ್ರಾಮದ ಪಡಿತರ ಚೀಟಿದಾರರು ಹಾಲಿ 2 1/2 ಕಿ.ಮೀ ಅಂತರವಿರುವ ಭಟ್ಟರ ಮಾರೇನಹಳ್ಳಿ ಗ್ರಾಮದ ನ್ಯಾಯಬೆಲೆ ಅಂಗಡಿಯಿಂದ ಪಡಿತರ ಪದಾರ್ಥಗಳನ್ನು ಪಡೆಯುತ್ತಿರುತ್ತಾರೆ. ಸದರಿ ಕೊಂಡೇನಹಳ್ಳಿ ಗ್ರಾಮದಲ್ಲಿ ಎಎವೈ-4, ಬಿಪಿಎಲ್-143, ಎನಿವೈ-6 ಪಡಿತರ ಚೀಟಿಗಳು ಸೇರಿದಂತೆ ಒಟ್ಟು 153 ಪಡಿತರ ಚೀಟಿಗಳನ್ನು ಭಟ್ಟರ ಮಾರೇನಹಳ್ಳಿ ಗ್ರಾಮದ ನ್ಯಾಯಬೆಲೆ ಅಂಗಡಿಯಿಂದ ವಾಪಸ್ಸು ಪಡೆದು ಸಮೀಪವಿರುವ ಗಂಗವಾರ ಚೌಡಪ್ಪನಹಳ್ಳಿ ಗ್ರಾಮದ ಶ್ರೀ.ಕೆ.ಗೋಪಾಲ ನ್ಯಾಯಬೆಲೆ ಅಂಗಡಿ ಸಂಖ್ಯೆ 2ಕ್ಕೆ ನಿಯೋಜಿಸಿ ಆದೇಶಿಸಿರುತ್ತದೆ.”

4. After service of notice, the official respondents having entered appearance through the AGA oppose the Writ Petition contending that the punitive action is taken because of the misconduct committed by the petitioner as a fair price depot owner to the prejudice of the public interest and after holding an enquiry; he further contends that the impugned order being appealable, ordinarily, the Writ Court should not grant indulgence in the matter; so contending, he seeks dismissal of the Writ Petition however, third respondent-

Society despite service of notice has chosen to remain unrepresented.

5. Having heard the learned counsel for the parties and having perused the Petition Papers, this court is inclined to grant a limited indulgence in the matter inasmuch as the records produced by the petitioner as Annexures prima facie show that the enquiry was conducted by an official who does not happen to be the author of the impugned orders; the Apex Court in **Gullapalli Nageswara Rao Vs. APSRTC, AIR 1959 SC 308** has held that where the person who holds enquiry is different from the person who passes the orders, a copy of the enquiry report has to be furnished to the persons who are likely to be aggrieved thereby and only thereafter, orders should be passed.

6. The above view is consistent with the decision of the Apex Court in **Union of India Vs. Mohd. Ramzan Khan (1991) 1 SCC 588** although it was in the context of disciplinary enquiry of a public servant; thus, the impugned orders are in gross violation of the principles of natural

justice and they were therefore stayed by a Co-ordinate Bench of this court *pendente lite*.

7. The vehement contention of learned AGA that there is an alternate remedy available to the petitioner, does not merit acceptance, because of long lapse of time between filing of the Writ Petition on 30.05.2016 and its disposal this day; its more than five years; that apart, rule of alternate remedy is only a judicial invention which cannot be applied as Euclid's Theorem regardless of factual variations that too when the principles of natural justice which are held to be part of Articles 14 & 21 of Constitution of India, are violated.

In the above circumstances, this Writ Petition succeeds; impugned orders are set at naught; matter is remitted to respondent-Deputy Commissioner for consideration afresh in accordance with law and with the participation of the petitioner; all contentions are kept open.

Time for compliance is three months.

Now, no costs.

**Sd/-
JUDGE**