

(2001) 03 AP CK 0008

Andhra Pradesh High Court

Case No: Writ Petition NO. 3991 of 2001

Manikeshwari Agencies, Indian
Oil Corporation Kerosene
Wholesale Dealer, Maheswaram

APPELLANT

Vs

Joint Collector, Rangareddy
District

RESPONDENT

Date of Decision: March 29, 2001

Acts Referred:

- Essential Commodities Act, 1955 - Section 6

Citation: AIR 2001 AP 300 : (2001) 3 ALD 111 : (2001) 2 ALT 552

Hon'ble Judges: B. Sudersan Reddy, J

Bench: Single Bench

Advocate: MR. Nuty Rama Mohana Rao, for the Appellant; Government Pleader for Civil Supplies, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

B. Sudersan Reddy, J.

The proceedings dated 9th October, 2000 on the file of the Joint Collector, Rangareddy District suspending the licence of the petitioner in purported exercise of the power under Clause 28 of A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980 (for short "the Petroleum Products Order") is impugned in this writ petition.

2. Before advertng to the question as to whether the impugned order suffers from any legal infirmities, it may be necessary to notice a few relevant facts:

The petitioner has been appointed as Kerosene Wholesale Dealer by the Indian Oil Corporation Limited by proceedings dated 27-9-1986 and there is no dispute whatsoever that the same is still subsisting. The petitioner as is required applied for and obtained and licence for purchase - sale -storage for sale of Kerosene under the

Petroleum Products Order from the Licensing Authority. The petitioner on procuring the Kerosene from the Indian Oil Corporation is required to supply the same to retail dealers nominated by the State Government and also to allotted Fair Price Shops. The petitioner firm has to supply kerosene oil to the nominated retail dealers and the Fair Price Shop dealers situated in Maheswaram, Kandukuru and Saroornagar Mandals of Rangareddy District. It is alleged that in the month of September, 2000 the petitioner supplied Kerosene oil more than the allotment made by the Collector (Civil Supplies) and also without bills. It is alleged that the petitioner failed to maintain proper accounts. During the verification of sales bill book, certain defects were noticed and we are not, for the present, concerned with the details of those alleged irregularities. It is also the case of the respondents that during physical verification, it was found that there is variation in the book balances with ground stock. It is the case of the respondents that the petitioner on his own accord distributed the kerosene oil without any order from the competent authority. The petitioner made an attempt to divert the kerosene into black market.

3. The Joint Collector, on examination of the report submitted, issued orders suspending the licence of the petitioner in purported exercise of the power under Clause 28 of the Petroleum Products Order. The petitioner is served with the show-cause notice dated 30-1-2001 containing the following charges:

Charge No. 1: That the SKO wholesale dealer has distributed PDS kerosene oil to the NR dealers No.105, 346, 885, 256 and 502 more than allotment made in proceedings No.A3/411 /99 dated 30-9-2000 for the month of October, 2000 in violation of licensing clause 3 read with clause 24 of APPP (L&RS) Order, 1980 and also conditions of licence.

Charge No.2: The wholesale kerosene oil dealers shall distribute kerosene oil to the NR dealers on allotment by issuing correct receipt duly indicating the date of transactions, the quantity sold, the price per liter and total amount charged and shall keep a duplicate receipt for inspection on demand by the licensing authority as per the licensing conditions 9 of APPP (L&RS) Order, 1980. But you being a responsible dealer has distributed kerosene oil without allotment and also without issuing the correct bills.

4. The Joint Collector accordingly directed the petitioner to submit his written statement to the charges within seven days from the date of receipt of the notice. The petitioner was required to be present in person along with the evidence, if any, in support of his case on 17-2-2000. The petitioner did not submit any explanation, but submitted an application requesting the Joint Collector to grant two weeks time to submit reply. In the meanwhile, the petitioner had chosen to file this writ petition.

5. It may also be noticed that simultaneously the proceedings u/s 6-A of the Essential Commodities Act, 1955 (for short "the Act") were also initiated against the petitioner resulting in final orders dated 6-1-2000 in Crime No.59 of 2000 directing

the confiscation of entire seized stock in favour of the Government. The petitioner, aggrieved by the same, filed an appeal u/s 6-C of the Act before the learned Principal Sessions Judge, Rangareddy District and obtained interim order of suspension of the orders passed by the Joint Collector so far as the confiscation of the seized stocks or the monetary value thereof, as well as bank guarantee. We are not really concerned in this writ petition with the validity of the order passed by the Joint Collector u/s 6-A of the Act confiscating the seized commodities, since the same is the subject-matter of an appeal before the appellate authority.

6. The validity of the order suspending the licence of the petitioner alone is impugned in this writ petition. It is contended that the Licensing Authority has no power or jurisdiction to suspend the licence granted under the Petroleum Products Order pending proceedings u/s 6-A of the Act. It is contended that the power to suspend the licence is a separate and independent act, which has to be carried out separately unconnected with the pendency of Section 6-A proceedings. The licence issued under the Petroleum Products Order cannot be kept under suspension on the ground of pendency of the proceedings initiated u/s 6-A of the Act. The proceedings initiated u/s 6-A of the Act are distinct and separate and the same cannot constitute a ground for suspending the licence.

7. The learned Government Pleader for Civil Supplies contends that the licence of the petitioner has been kept under suspension pending enquiry into various irregularities and contraventions committed by the petitioner and the same is followed by a show-cause notice issued by the competent authority requiring the petitioner to show-cause as to why further appropriate action should not be taken against him in the matter. It is contended that it is a clear case of suspension of licence pending detailed enquiry. It is contended that the licence of the petitioner has been kept under suspension not on the ground of pendency of proceedings initiated against him u/s 6-A of the Act.

8. Before dealing with the rival contentions, it may be appropriate to notice the impugned order, which is to the following effect:

"In the reference cited, the Inspector of Police, Vigilance Cell, Rangareddy District has reported that M/s Manikeshwari Agencies, IOC, Kerosene Wholesale Dealer, Maheshwaram has been indulging in clandestine business by diverting the 12 KL PDS Kerosene into black market received vide Invoice No.538715, dated 28-9-2000 and gaining illegal profits and booked a case u/s 6-A of Essential Commodities Act, 1955.

In view of the above, License issued to M/s. Manikeshwari Agencies, IOC Kerosene Wholesale Dealer, Maheshwaram is hereby suspended under clause 12(i)(ii), clause 28 of A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980 pending 6-A proceedings"

9. It is true that the impugned order is somewhat not clear. It reads as though the licence of the petitioner is kept under suspension under Clause 12(1)(ii) read with Clause 28 of A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980 pending 6-A proceedings. But the record and the show-cause notice dated 30-1-2001 would clearly reveal that the licence of the petitioner has been kept under suspension pending further enquiry into the matter under the Petroleum Products Order by the Licensing Authority. It is not a case of suspension of the licence of the petitioner issued under the Petroleum Products Order on the ground of pendency of proceedings initiated against him u/s 6-A of the Act.

10. There is no dispute whatsoever that every licensee, according to clause 12(1)(ii) of the Petroleum Products Order is required to maintain true and correct accounts of all purchases and sales of the petroleum products and as per clause 12(1)(iv) every wholesale dealer in kerosene shall take all reasonable steps to lift kerosene as allotted by the Collector and keep adequate quantity for release to the dealers as per the allotment order of the Collector (Civil Supplies). Clause 24 of the Petroleum Products Order mandates that the wholesale dealers are required to sell the kerosene supplied by the Oil Company as per the allotment made by the Collector to retail dealers, namely, the nominated retailers, Fair Price Shop dealers for selling kerosene meant to card holders under Public Distribution System.

11. As per Condition 9 of the Licence under Form B, every licensee shall issue a correct receipt giving his own name, address and licence number and date of transaction, the quantity sold, the price per litre, total amount charged and shall keep a duplicate of the same to be available for inspection on demand by the licensing authority.

12. It is the clear case of the respondents that the petitioner violated clause 12(1)(ii) of the Petroleum Products Order. It is even spelled out in the impugned order. No doubt, the impugned order is somewhat unintelligible, but that itself would not be a ground, in my considered opinion, to quash the very impugned order. It is discernible even from the impugned order itself that the licensing authority invoked the power and jurisdiction, to suspend the licence, conferred upon him under Clause 28 of the Petroleum Products Order. Mere reference to the case registered against the petitioner u/s 6-A of the Act and the observation that the licence of the petitioner is kept under suspension pending the proceedings initiated against the petitioner u/s 6-A of the Act, itself would not be a ground to quash the order. Inartistic expressions used in passing the impugned order itself may not be a ground to set aside the same. The Court is required to examine as to whether the licensing authority has jurisdiction to pass the impugned order suspending the licence of the petitioner. The licence of the petitioner is obviously kept under suspension pending further enquiry, as the same is evident from the follow up action by setting the law in motion vide show-cause notice dated 30-1-2001. The report submitted to the Collector, based upon which the impugned order has been

passed, is also clear and reveals the nature of allegations attracting the various clauses of the Petroleum Products Order. Clause 28 of the Petroleum Products Order reads as follows:

28. Contravention of conditions of licence Registration Certificate/Supply Card/

Provisions of this Order:--(1) No holder of a licence or registration certificate or supply card issued under this order or his agent or servant or any other person, acting on his behalf shall contravene, attempt or abet the contravention of any of the provisions of this order or any of the conditions of the licence, registration certificate or any directions issued thereunder if any such holder or his agent or the servant or any person acting on his behalf contravenes any of the said terms and conditions may be cancelled or suspended for such period as may be specified by an order in writing by the licensing authority :

Provided that no order shall be made under this clause unless the licensee or the holder of registration certificate has been given a reasonable opportunity for representing his case on writing and also having heard in person against the proposed cancellation.

(2) Pending action as in sub-clause (1) above, the licensing authority for-reason to be recorded in writing order an interim suspension of the licence, registration certificate or supply card.

13. A plain reading of sub-clause (1) of Clause 28 of the Petroleum Products Order would make it clear that the licence issued under the order may be cancelled or suspended for such period as may be specified by an order if the holder of a licence or his agent or the servant or any person acting on his behalf contravenes, attempts or abets the contravention of any of the provisions of the Petroleum Products Order or any of the conditions of the licence issued under the Petroleum Products Order. Sub-clause (2) of the Clause 28 enables the licensing authority to pass an order of interim suspension of the licence, registration certificate or supply card pending action as in sub-clause (1) of the Clauses 28. It is clear from the record and the impugned order that the licensing authority, prima facie, came to the conclusion that the petitioner herein violated the clause 12(1)(i)(ii) of the Petroleum Products Order by not maintaining the correct accounts of all purchases and sales of the petroleum products. It is clearly alleged in the impugned order itself that the petitioner has been indulging in clandestine business by diverting the 12KL PDS Kerosene into black market received vide. Invoice No.538715, dated 28-9-2000. The contravention alleged to have been committed by the petitioner would clearly attract not only Section 6-A of the Act, but also sub-clause (1)(i) (ii) of Clause 12 of the Petroleum Products Order.

14. Therefore, it is a clear case where the licence is kept under suspension pending action as in sub-clause (1) of Clause 28 of the Petroleum Products Order. It is only an interim order pending finalisation of the proceedings under Clause 28(1) of the

Petroleum Products Order.

15. It is not a case where the licence of the petitioner is kept under suspension pending the proceedings u/s 6-A of the Act. Mere reference to the factum of pendency of proceedings u/s 6-A of the Act in the impugned order itself would not vitiate the proceedings. The entire order is to be read together. Inarticulate and inartistic expressions used in the impugned order itself does not give rise to quash the very impugned order, if the jurisdiction of the competent authority is traceable to correct provision of law.

16. In *Filmore Service Station v. Joint Collector, Krishna and others*, 1995(1) ALD 167, it is observed by this Court that "sub-clause (2) of Clause 28 provides for interim suspension of the licence, registration certificate or supply card. But such an interim suspension order will have to satisfy the two requirements mentioned in the said sub-clauses (2); firstly, it can be made only "pending action as in sub-clause (1)", and secondly "for reason to be recorded in writing". Adverting to the facts in the said case, the Court observed that "some reasons are given therein. But the other requirement is clearly not satisfied in the case".

17. This Court in *Commissioner of Civil Supplies, Hyderabad v. Radha Automobiles*, 1990 (2) APLJ 243, observed:

"A bare look at sub-clause (2) of clause 28 will show that this sub-clause can be resorted to only pending action as contemplated in sub-clause (1). Again, no action till today has been initiated against the respondent under sub-clause (1) of Clause 28. Therefore, Clause 28 could also not be resorted to. The only proceedings, which were pending, were proceedings u/s 6-A of the Essential Commodities Act. We have nothing to do with the proceedings as contemplated by the aforesaid Order".

18. It was a case where no action has been initiated against the licensee under sub-clause (1) of Clause 28. In the instant case, the licensing authority set the law in motion against the petitioner herein for taking further action under Clause 28(1) of the Petroleum Products Order.

19. It is true that the respondent-Joint Collector issued a show-cause notice dated 30-1-2001 after passing the impugned order of suspension. Obviously, as on the date of the impugned suspension order dated 9-10-2000, no proceedings under sub-clause (1) of Clause 28 of the Petroleum Products Order were initiated. As held by this Court in *Filmore Service Station (supra)*, the suspension order passed by the Joint Collector is bad and not in accordance with law. But in the said case, in similar circumstances, this Court refused to exercise its discretion to set aside the impugned order of suspension in view of the fact that as on the date of the judgment enquiry under sub-clause (1) of Clause 28 of the Petroleum Products Order has been initiated. The learned single Judge derived the support for not exercising the discretion from the judgment of a Division Bench of this Court in *J. Subrahmanyam v. Joint Collector, Nellore and another*, WA No. 1295 of 1993 and WP

No.969 of 1993, dated 11-11-1993.

20. For the very same reason, I am not inclined to interfere with the impugned order of suspension and set aside the same. It is well settled that issuance of writs in the nature of mandamus, certiorari and prohibition is not matter of course. The Court would be well within limits not to interfere and exercise its discretion even if the impugned order passed by the authority is not strictly in accordance with law, unless the Court comes to a conclusion that the refusal to interfere would not be in the interest of justice. The allegations levelled against the petitioner are very serious in nature, which requires thorough enquiry by the licensing authority.

21. In the circumstances, the respondent-Joint Collector is directed to complete the enquiry initiated under the show-cause notice No.A7/1176/2000, dated 30-1-2001 under sub-clause (1) of Clause 28 of the Petroleum Products Order within ten weeks from the date of receipt of a copy of this order and pass appropriate orders in accordance with law.

22. The writ petition is accordingly disposed of with the above direction. No order as to costs.