

(2008) 01 GUJ CK 0093

In the Gujarat High Court

Case No : Special Civil Application No. 8149 of 1995

Ashok Ratilal Parmar and Another

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 29-01-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 61 GLH 2 : (2008) 2 GLH 61

Hon'ble Judges : C.K. Buch, J

Bench : Single Bench

Advocate : D.M. Thakkar, for Petitioners 1 - 2, for the Appellant; Pandit, Asst. Government Pleader for Respondents 1 - 2, for the Respondent

Final Decision : Allowed

Judgement

C.K. Buch, J.—Invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India, two petitioners, who are licence holder of fair price shop at Village Limdi, Dist: Surendranagar have prayed for following reliefs.

11(a) Your Lordships be pleased to issue appropriate writ, direction or order for quashing and setting aside the impugned orders dated 5-9-95 by the respondent No. 1 as being illegal, arbitrary, without jurisdiction, null and void;

11(b) Your Lordships be pleased to restrain the respondents, their agents and servants from implementing, executing and acting upon the impugned orders dated 5-9-95 passed by the respondent No. 1, pending the admission, hearing and final disposal of this petition;

11(c) xxx

2. It has been contended by the petitioners that petitioners are running fair price shops at Village Limdi since more than 15 years under the licence issued by the Government. The allegations were made that the petitioners have sold the stock of wheat so that the said stock can further be sold by the black marketers. The

petitioners were served with the notice to show-cause as to why the licence deposits as well as licence should not be forfeited and licence to run the fair price shop should not be cancelled. The stock of wheat was to be distributed amongst the labourers who were given employment because of drought situation. The each labourer was to be given 1 Kg. wheat Per head per day or some cash payment to be made against the work done by them. It was alleged against the petitioners that they had handed over the entire stock to one person and the stock of wheat was thereafter loaded in the truck and the said truck was intercepted at the time when it was plying towards Ahmedabad.

2.1 That total four shopkeepers were found responsible and Civil Supply Department of Dist: Surendranagar had initiated actions against all the four shopkeepers including the present petitioners. One of the shopkeeper was died pending the proceedings so the case against him was closed. Thereafter, the impugned order of cancellation of licence was passed against the three shopkeepers and two of them are the present petitioners and one of them has perhaps not approached this Court or might have initiated an independent action.

3. Mr. Thakkar, learned Advocate for the petitioners has submitted that the present petitioners should be granted the relief as prayed for in the interest of justice for the following reasons.

i. The first Officer competent to initiate action, i.e. District Supply Officer had issued Notice to show-cause to the petitioners and the petitioners were asked to tender their written explanation. That in the month of July, 1989 on receipt of the notice to show-cause both the petitioners have given explanation and substantially explanation was accepted by the said Officer.

ii. The petitioners were served with notice to show-cause as to why two different penalty should not be imposed; one as to forfeiture of the licence deposit and second as to why licence given to the petitioners should not be cancelled. However, the Civil Supply Officer found that when the explanation tendered by the shopkeepers are logical and to the satisfaction of the authority, they should be held responsible in material irregularity in handing over the stock of wheat to one person who claimed that he was sent by the labourers so that wheat can be distributed between the labourers at the place where they were actually working. So the real wrong doers are the labourers and not the petitioners who are the shopkeepers.

iii. The petitioners had not challenged the decision of the District Supply Officer and had accepted the decision of imposition of penalty of Rs. 500/- each but surprisingly in the month of August, 1993, the petitioner received a notice to show-cause from Deputy Secretary of Department of Civil Supply of State of Gujarat, after lapse of about more than five years and this action can be said to be prejudicial and arbitrary. The authority of the State Government could have taken decision of the District Supply Officer in the Suo Motu Revision but as no revisional jurisdiction has been exercised by the Deputy Secretary and he has

attempted to deal with matter of original proceedings exercising power of review. As such there is no power of review. The Deputy Secretary could have directed the District Supply Officer to review his earlier decision. When the District Collector, Surendrangar had not exercised any jurisdiction vested with him, there is no reason for the State Government to initiate review the proceedings to take a grave action after lapse of more than five years.

iv. The revisional power normally should be exercised within a reasonable period of time and period of five years cannot be said to be a reasonable period of time. When the present petition is filed, this Court has granted interim-relief to the petitioners mainly on the ground that after 1989 the petitioners were earning their livelihood by running a fair price shop and as such no irregularity or illegality were found to have been committed by them during this period (between 1989 and 1993).

v. Time and again this Court has extended the interim-relief for want of formal reply from the State Government. However, the averments made by the petitioners has not been controverted by the State. On last occasion learned A.G.P. was given opportunity so that the State can resist the petition and can explain reasonably that why the State Government decided to review the order of District Supply Officer after lapse of more than five years. Any penal action, if taken, after lapse of five years, is capable of causing serious prejudice because the delinquent would not have retained the material which can be produced before the authority for his defence.

vi. The order under challenge passed by the Deputy Secretary dated 5/9/1995 even is not a speaking order and no cogent reasons has been given by the Officer as to why the punishment should not be enhanced to its extreme extent i.e. by cancelling licence issued to the petitioners. That most of the portion of the impugned order is nothing but the discussion of submissions made and the facts that were placed before the District Supply Officer. The finding is more moral than the legal. The Deputy Secretary ought to have remanded the matter to Collector or District Supply Officer so that adequacy of the punishment can be re-examined by any of these two authorities, knowing the ground realities. But, it appears that the Deputy Secretary dealing with the revenue proceedings was determined to cancel the licence of the petitioners and present case is nothing but a pre-judge action of the Officer and therefore the present petition requires to be allowed and impugned order requires to be quashed and set aside.

4. The resistance placed by learned A.P.P., is that there is no need to file any reply by the State Government, as the facts are glaring. The petitioners were found responsible in handing over the entire material to one individual. Merely because the petitioners were able to carry out their fair price shop business on the strength of an interim-order granted by this Court, they should not be put to any advantageous position. Ultimately, the transparency in the public distribution system is the basic requirement and therefore the Officer has rightly decided to cancel the licence of the petitioners to run the fair price shop.

5. Considering the totality placed by Mr. Thakkar and mainly the discussion made herein above, this Court is of the view that imposition of extreme penalty of cancelling the licence of the petitioners after lapse of five years is not sustainable in the eye of law. If the concerned Officer of the State Government was of the view that the licence of the petitioners require to be cancelled then he ought to have remanded the matter back with adequate observations based on sound reasons to the District Supply Officer. The petitioners could have been given a notice as to why the higher amount of penalty should not be imposed. The District Supply Officer or the Collector, Surendranagar could have been asked to give reasonable and appropriate finding. Here, the situation created for the petitioners is that they had lost the opportunity to place their case in detail against the proposed cancellation of licence before the Superior Officer sitting in the State Government.

6. There is enough force in the argument advanced by Mr. Thakkar that action of cancelling the licence after lapse of five years has caused serious prejudice to the petitioners. If the State Government intends to exercise their revisional power or wants to take any further action invoking such powers resulting into enhancement of the penalty imposed earlier, then such powers should be exercised in a reasonable period of time and there is s settled law on this point. It appears that the Deputy Secretary while passing the impugned order or while issuing notice to show-cause to the petitioner has ignored the doctrine of reasonable period of time. True it is that the period of reasonable time, which can be said to be reasonable may vary from case to case. But, period of five years in the present fact situation appears to be most unreasonable. At the most, the State would have remanded the matter back to the District Supply Officer again especially when the petitioner at present is running a fair price shop and even today it is not the say that they were found responsible for any material irregularity in the period in between. It is very likely that the District Supply Officer might not have decided to cancel the licence after lapse of very long period. The action of the State authority is not justifiable action. The Court is of the view that it would not have been either proper or otherwise justifiable for the State Government to relegate the petitioner to the District Supply Officer in the same old proceedings which was initiated in the year 1989 and concluded in the year 1995.

7. For the aforesaid reasons, the present petition is allowed. The impugned orders dated 5-9-95 passed by the respondent No. 1 cancelling the licence of the petitioners is hereby quashed and set aside. Now, there shall not be any further action in reference to the alleged wrong committed by the petitioners in the year 1989. It is, however, clarified that at present if the petitioners are facing other proceedings in the capacity of a licence holder of fair price shop, the observations made by this Court shall not come in way of that proceedings. Rule is made absolute to the aforesaid extent.