
(2019) 07 GUJ CK 0113

In the Gujarat High Court

Case No : R/Special Civil Application No. 6301, 6305, 6309, 6313, 7859, 7860, 7924, 7928, 7930, 7934, 7935 Of 2019

Babubhai Kachrabhai Nakum

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 11-07-2019

Acts Referred:

Citation : (2019) 07 GUJ CK 0113

Hon'ble Judges : A.Y. Kogje, J

Bench : Single Bench

Advocate : Am Parekh, Dhawan Jayswal, Rohan N Shah, Sahil B Trivedi, Adityasinh Jadeja

Final Decision : Partly Allowed

Judgement

1. This group of petitions are arising out of the same subject matter, i.e. to say cancellation of fair price shop license allotted to each petitioner. Such

licenses were ordered to be cancelled in the wake of large scale wheat scandal for which criminal prosecution was also launched. Considering the

common subject matter of the petitions and identical submissions made, all these petitions are taken up joint disposal, with consent of learned

Advocates for the parties. However, the facts are recorded from Special Civil Application No.6301/2019.

2. Learned Advocate for the petitioner submits that the petitioner was holding a Fair Price License bearing No.R-48 and Agreement No.48 for a Fair

Price Shop at Village Gadhka, Taluka Kalyanpur, District Jamnagar. It is submitted that on account of the offence registered with Kalyanpur Police

Station by the Local Crime Branch, Jamnagar for illegal sale of 360 bags of Wheat, the main accused â?" Shailesh alias Bholo Natvarlal Kotecha was

arrested and apparently during the course of investigation, the Police found that the wheat which were subject matter of the Scam part of which was

procured from the petitioner as well and therefore, the proceedings against the petitioner were also instituted by invoking the provisions of The Gujarat

Essential Articles (Licensing, Control And Stock Declaration) Order, 1981 [hereinafter referred to in short as 'the Control Order, 1981']. However, as

provided under the provisions of the Control Order, 1981, the principles of natural justice were not followed as the petitioner was not afforded an

opportunity of hearing before the cancelling the license.

3. Learned Advocate for the petitioner has relied upon Clause 8(1) of the Control Order, 1981 which provides for reasonable opportunity of hearing

before the authority who passed the order of cancellation, in the present case, the District Supply Officer. He refers to the first order of District

Supply Officer dated 14.03.2013 and submitted that though the District Supply Officer has referred to 9 various documents but none of these

documents can be said to a notice or an opportunity of hearing was provided to the petitioner before passing of the order.

4. It is submitted that subsequently the Appeal before the Collector and the order passed by the Revisional Authority, the Secretary reiterates finding

of the District Supply Officer and merely because the name of the petitioner had been uttered by the main accused, the license of the petitioner has

been cancelled without granting an opportunity of hearing. It is submitted that insofar as criminal offence is concerned, chargesheet is filed and the

petitioner who if an accused as per the chargesheet is bound to face criminal prosecution. However, the action against the petitioner is independent of

the criminal prosecution and governed by the licensing condition. In the event of breach of such a license condition, the petitioner has to be afforded an

opportunity of hearing before taking any adverse action especially where the action is as gross as cancellation of the license.

5. As against this, learned Assistant Government Pleader has opposed the grant of petition contending that the action was initiated on account of a

very large scale scandal where wheat which was meant for distribution under the Fair Price Shop was purchased at very high prices and were sold in

the open market by the accused of the offence. During the course of investigation, it was found that role of the petitioner is also unearthed insofar

supply of part of the wheat from his Fair Price Shop and hence, considering the gravity of the offence, the authorities were constrained to take harsh

steps of first suspending the license and thereafter, cancelling the same. It is submitted that the contention of the petitioner for a show cause notice

cannot be accepted as the same is not provided under Clause 8 of the Control Order, 1981. It is submitted that considering the serious offence in

which the petitioner is involved, no lenient view can be taken towards the petitioner.

6. It is also contended by learned Assistant Government Pleader that the exercise of providing opportunity of hearing by the District Supply Officer

would be a futile exercise as subsequently, when the matter was taken up by the Collector as well as the Secretary, the order indicates that on several

occasions, the petitioner who was represented by an Advocate had sought an adjournment to make submissions regarding his case.

7. I have considered the rival submissions and have also perused the documents on record.

Clause 8 of The Gujarat Essential Articles (Licensing, Control And Stock Declaration) Order, 1981 reads as under :-

â??8. Suspension of cancellation of licence for contravention of Order or conditions of licence. - (1) No holder of a licence issued under this order or

his agent or servant or any other person acting on his behalf shall contravene any of the terms or conditions of a licence issued to him and if any such

licence holder or his agent or servant or any person acting on his behalf contravenes any of the terms or conditions then, without prejudice to any other

action that may be taken against him his licence may be cancelled or suspended with regard to one or more essential articles by an order of the

licensing authority in writing;

Provided that no order shall be made by the licensing authority under this clause unless the licence holder has been given a reasonable opportunity of

stating his case to that authority against the proposed cancellation or suspension not being suspension referred to in the sub-clause (2) during the

proceeding for cancellation of a licence.â??

8. The proviso to Clause 8 of the Control Order, 1981 clearly provides for a reasonable opportunity of stating his case to that Authority against the

proposed cancellation or suspension. Here in this case, the action proposed is

that of cancellation of license. In the impugned order dated 14.03.2013, a reference is made to nine various documents which are elaborately discussed in the order. Such documents pertain to the Report of the Mamlatdar - Kalyanpur, the First Information Report registered by the Circle Police Inspector â?" Bhanwad, the Report of the Local Crime Branch â?" Jamnagar, the chargesheet filed by the Circle Police Inspector â?" Bhanwad and the communication issued by the Police Inspector â?" Local Crime Branch. One communication referred to is that of 01.02.2013 by the Mamlatdar â?" Kalyanpur; though this communication is not on record, it appears to be the Report of the cross checking done by the Mamlatdar and another communication dated 15.01.2013 appears to be the opinion by the Mamlatdar â?" Kalyanpur for suspension of license. Nowhere, it is coming on record that such opinion of the Mamlatdar is furnished to the petitioner. Moreover, the proceedings as recorded by the District Supply Officer does not indicate as to an opportunity being provided to the petitioner to put up his case before the District Supply Officer who passed the order of cancellation of license.

9. Qua the submission of learned Assistant Government Pleader regarding futility of the exercise of affording an opportunity of hearing on the basis of hearing being given by the Appellate Authority and Revisional Authority, the same cannot be considered as proviso to Clause 8 of the Control Order, 1981 provides for grant of opportunity by the authorities who is taking the decision of cancelling or suspending the license, i.e. the District Supply Officer. Moreover, grant of opportunity of hearing to the petitioner to be represented through the Advocate is bound to be there as the petitioner himself is the Appealing Authority and the Revisional Authority before both the authorities.

10. In view of the aforesaid, it appears that the District Supply Officer has passed the order of cancellation of license and that the License Holder has not been given a reasonable opportunity of stating his case before the District Supply Officer. Such action is in breach of proviso to Clause 8 of the Control Order, 1981.

11. In view of the aforesaid, on this limited ground, the petitions are partly allowed and the cases are relegated back to the respondent No.3 â?" The District Supply Officer, Devbhumi Dwarka. The District Supply Officer, Devbhumi Dwarka in compliance of the proviso to Clause 8 of the Control

Order, 1981 shall provide an opportunity of hearing to the petitioners and take a fresh decision on the issue.

Direct Service is permitted.