
(2009) 03 GUJ CK 0018
In the Gujarat High Court

Case No : Special Civil Application No. 9919 of 2002

Babubhai Maherji Khatri

APPELLANT

Vs

District Civil Supply Officer and Others

RESPONDENT

Date of Decision : 30-03-2009

Acts Referred:

Citation : (2009) 03 GUJ CK 0018

Hon'ble Judges : Akil Abdul Hamid Kureshi, J

Bench : Single Bench

Advocate : Kunal S. Shah, for B.A. Surti, for the Appellant; Devang Vyas, AGP for Respondent Nos. 1 - 3, for the Respondent

Judgement

Akil Kureshi, J.—The petitioner has challenged an order dated 2.8.2001 passed by the District Supply Officer as upheld by the Collector by order dated 27.9.2001 and by the Deputy Secretary, Government of Gujarat in revision by order dated 23.3.2002.

2. The petitioner was granted license for selling kerosene. Finding that there was certain irregularity committed in distribution by the petitioner, a show cause notice dated 30.6.2001 came to be issued. In the notice, it was stated inter-alia that on behalf of the petitioner, some other person namely Suresh Khatri had received the quantity of kerosene. The petitioner had thereby committed breach of license and provisions of statute. He was called upon to show cause why his security deposit should not be confiscated.

2.1 The petitioner opposed the proposal and contended inter-alia that on account of his sickness some other person was authorised to receive the kerosene which was only a technical breach.

2.2 The District Supply Officer however, by his impugned order dated 2.8.2001 not only confiscated the security deposit also ordered cancellation of license of the petitioner. The petitioner appealed against the same, but revision failed. He has therefore, filed the present petition.

3. Learned advocate for the petitioner contended that the orders of the authority travelled beyond the scope of the show cause notice and cancellation of the license was never envisaged in the notice.

4. Learned AGP on the other hand, contended that the breach was admitted by the petitioner. Orders passed by the authorities are therefore, just and proper.

5. It cannot be denied that show cause notice called upon the petitioner to reply as to why security deposit should not be confiscated. The ground mentioned therein was that on his behalf kerosene was received by unauthorised person which was in breach of condition of license and other statutory provision. However, the impugned order passed by the District Supply Officer provided for cancellation of license. This was not only on the unauthorised person receiving kerosene on behalf of the petitioner but also on the ground that upon such receipt of kerosene, same was misused by him. This again was never a part of the show cause notice. Further, there was no material on record to hold that after receipt of kerosene, the said person had misused it for some unauthorised use. If there was any material, same was collected ex-parte by the Government, used against the petitioner without any notice to him.

6. The petitioner in his appeal clearly contended that breach was a technical breach and that there was no misuse of the kerosene but was received by other person since the petitioner was himself unwell. Thus the allegation that after receiving the kerosene, the unauthorised person further misused, was never admitted by the petitioner. This aspect was never disclosed in the show cause notice. Without putting the petitioner to notice and without even disclosing any material in this regard to him, the authority could not have held this issue against the petitioner. On all counts, thus the order passed by the authorities suffer from violation of principles of natural justice.

7. In the result, impugned orders at Annexures-A,B, and C are quashed. Insofar as same pertained to cancelling of the license of the petitioner, it is clarified that confiscation of the security deposit is upheld. However, many years have passed since the petitioner is deprived of his license, no stay was granted by this Court and license is to be restored to the petitioner. Presently the same has to be done in accordance with presently prevailing terms and conditions and Government policies.

8. Under the circumstances, by molding the relief after setting aside orders Annexures-A,B, and C, it is further provided that if the petitioner applies for fresh license, within a period of two month from today, the authorities shall decide such an application ignoring the impugned orders. Such fresh decision may be taken expeditiously and preferably within four months from the date of application of the petitioner.

9. The petition is disposed of. Rule made absolute accordingly.