

(2009) 09 GUJ CK 0004

In the Gujarat High Court

Case No : Special Civil Application No. 6502 of 2009

Dhanraj Mohanbhai Chandel

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 03-09-2009

Acts Referred:

Gujarat Essential Commodities (Licensing, Control and Stock Declaration) Order, 1981
— Section 7

Citation : (2009) 3 GLH 737 : (2009) 3 GLR 2469

Hon'ble Judges : R.R. Tripathi, J

Bench : Single Bench

Advocate : Amit M. Panchal, for the Appellant; Rashesh A. Rindani, Asstt. Government Pleader for Respondent No. 1 and D.S. AFF. Not Filed (R) for Respondent Nos. 1 to 4, for the Respondent

Judgement

Ravi R. Tripathi, J.—The present petition is filed challenging order dated 12th May, 2009 (Annexure "G") and letter dated 20th June, 2009 (Annexure "H") to this petition.

The case of the petitioner is that initially retail kerosene licence No. 89 of 1981 was issued to one Shri Latifbhai Alibhai Shaikh in the year 1981. The petitioner entered into a partnership with said Shri Latifbhai Alibhai Shaikh in the year 1985. This entry of the petitioner as a partner was with the permission of the concerned authority, as contemplated under clause/condition 13 of the licence, which is relevant. It reads as under:

13. Any change in the ownership of business as shown in Part II of the licence shall amount to the transfer of licence to the ownership so changed resulting in contravention of Sub-clause (3) of Clause 4 of the order unless such transfer of licence is approved by the licensing authority.

2. The learned Advocate for the petitioner made available for perusal original licence. This licence is issued in favour of Shri Latifbhai Alibhai Shaikh. The

original licence was valid upto 31st December, 1985. It is thereafter renewed from time to time as detailed hereunder:

From 1-1-1986 To 31-12-1990	" 1-1-1991 " 31-12-1995
" 1-1-1996 " 31-12-2000	
" 1-1-2001 " 31-12-2005	

as mentioned on page 10 of the licence. On page 11, the name of the petitioner is shown as a partner.

The learned Advocate for the petitioner invited attention of the Court to page 2, on which photograph of the petitioner is stapled. Rightly so, because on the back of the photograph there is an endorsement which reads as under:

Certified to be a true and genuine photograph of "Mr. Dhanraj Mohanlal" of "Fulwada", Taluka "Chorasi", District Surat.

Sd/- (Illegible) Mamlatdar, Chorasi Sd/- (Dhanraj Mohanlal) Sd/- (Parasmal Gopal)

The contents in inverted comma are in vernacular. Two signatures are also in vernacular. A xerox copy of the register which contains the record of such transfers is produced at page 20. It contains "licence number", "the name of licence-holder" with "address", and the "place of business". There is also a column for "place of godown". In the column of "name of licence-holder", name of Latifbhai Alibhai Shaikh, resident of Ashwanikumar Road, Khatachal, Surat, is mentioned. Thereafter, there is an entry, titled as addition of partner. Below that the name of "Dhanraj Mohanbhai Chandel, "aged 30 years" is mentioned. It is signed by the Mamlatdar, Chorasi. In the column of "place of business", initially, it is mentioned as "Ashwanikumar Road, Khatachal, Surat-8". Besides, Ward No. 15A is also mentioned. Thereafter, there is an addition which is again signed by the Mamlatdar, Chorasi. In that column, the last entry says that, "Amendment carried out. Ward No. 18, Brahman Falia, Fulwada". It is again signed by the Mamlatdar, Chorasi. In the column meant for "licence-holder, names and addresses, "a photograph of the petitioner is affixed. A round rubber seal is also stamped on that. Adjoining to the photograph, there is an entry stating that, "in the newly provided format" again there is signature of the Mamlatdar, Chorasi. Date mentioned below signature is "13/9". Year is illegible.

3. The learned Advocate for the petitioner submitted that the petitioner was carrying on business since 24th June, 1985 as a partner on the basis of this licence. The learned Advocate for the petitioner submitted that there is ample evidence on record to show that the fact of the petitioner being a partner was known to the authorities. The learned Advocate for the petitioner submitted that in Para 4.2, he has set out the dates on which the business place of the

petitioner was inspected. Though the dates are numerous, the relevant are reproduced hereunder:

30-11-1985 6-2-1986 14-2-1986 15-3-1986 4-6-1986 26-9-1986 17-10-1986
12-12-1986 7-1-1987 18-2-1987 12-3-1987 24-5-1987 7-5-1987 3-6-1987
4-8-1987 27-10-1987 24-12-1987 7-1-1988 24-3-1988 22-4-1988 9-6-1988
14-9-1988 27-10-1988 20-12-1988 3-12-1989 8-3-1989 2-4-1989 13-7-1989
8-1-1990 6-2-1990 8-3-1990 22-6-1990 25-12-1990 18-1-1991 6-4-1991 &
2-5-1991.

There are other dates, on which the business place of the petitioner was inspected, but those are subsequent to an order passed by the District Supply Officer, Surat dated 22nd July, 1991. In this order it is mentioned in Para 1 that the original licence is in the name of Shri Latifbhai Alibhai Shaikh, "that this licence was first granted at the address at Ashwanikumar Pati Ni Chal, House No. 11". Thereafter, the licenceholder shifted his business in July, 1985, to "Fulpada Ward No. 10, Brahman Faliyu, Surat". It is thereafter mentioned in the same para that in the said licence, Shri Dhanraj Mohanlal is entered as a partner and by that Section 7 of the Gujarat Essential Commodities (Licence, Control and Stock Declaration) Order, 1981 is breached.

Thereafter, in the latter part of the order, it is mentioned that from the papers and from the explanation it is noticed that "change of place" and "partnership" are accorded sanction by the Mamlatdar.

This shows that District Supply Officer has condoned the so-called irregularity, committed either by the original licenceholder or by the petitioner by order dated 22nd July, 1991. No action was taken against the petitioner or the original licenceholder and for the same and in connection with some other irregularities forfeiture of deposit of Rs. 500/- was ordered.

4. The learned Advocate for the petitioner submitted that even thereafter, in the year 2008, by order dated 16th April, 2008, the authorities have recognised the petitioner as a licenceholder by allowing the petitioner to renew the National Certificate (National Savings Certificate), which had matured on expiry of the term and furnish fresh National Certificates (National Savings Certificate).

5. The petitioner was shocked when the petitioner came to know that the Director, Food & Civil Supplies Department has asked the Collector, Surat by letter dated 10th November, 2008 to make a report about the licences which are illegally run on "partnership agreement". It is specifically mentioned in that letter that there should be scrutiny, every taluka-wise and immediate action should be taken to cancel such licence immediately. It is mentioned in the letter that Panchnama - Pages 11/5 to 15/5, statement of Shri Dhanraj Mohanlal Chandel (Petitioner), xerox copies of pages 17/5 to 21/5, xerox copies of duplicate licence - pages 61/5 to 69/5 and xerox copy of partnership deed dated 24th June, 1985 are enclosed. The letter also mentions that in the subject-matter a report is to be made in time limit to the office of the Hon'ble Minister of Civil Supplies, hence

top priority should be given to the matter. The learned Advocate for the petitioner submitted that it will be important to note that in Para 1 of the said letter, it is stated that, "Shri Dhanraj Mohanlal Chandel (resident of 32, Ratanji Nagar, Beside Suryanagar, Ashwanikumar Road), Surat has entered into partnership by a deed executed on stamp paper of Rs. 50/- on 24th June, 1985 with the original licenceholder, Shri Latifbhai Alibhai Shaikh for kerosene licence No. 89 of 1981 that on perusal of the partnership deed it is noticed that the partnership is not legally made, because the partnership deed is not registered with Government Notary, that licences for kerosene issued by the Government are given on individual basis and there cannot be any partnership in the same because kerosene licences are "non-transferable".

The letter then proceeds to mention that, "on perusal of the licence it is noticed that in the licence photograph of the original licenceholder is not affixed, but the photograph of the partner, Shri Dhanraj Mohanlal Chandel, who has entered illegally is affixed, that in the inquiry, original licence is not produced, that duplicate licence is produced (xerox copy of licence is enclosed) at the time of inquiry, original licenceholder of kerosene, Shri Latifbhai Alibhai Shaikh is not found, that according to the statement of "Shri Dhanraj Mohanlal Chandel, Shri Latifbhai Alibhai Shaikh is of advance age, and therefore, he is residing at Ghatkopar area of Mumbai with his son".

6. The learned Advocate for the petitioner invited attention of the Court to the report made by the Collector by communication dated 23rd September, 2009, wherein it is mentioned in the opening part that in the subject-matter of letter dated 10th November, 2008, "it is found that the original licenceholder, Shri Latifbhai Alibhai Shaikh is alive and that he remained present before the District Supply Officer on 15th December, 2008 and has given his statement. As per his say he is holding retail sales licence of kerosene bearing No. 89 of 1981 in Katargam zone for Fulpad area which is renewed upto 31st December, 2010, that he represented before the Mamlatdar, Chorasi to include Shri Dhanraj Mohanlal Chandel as a partner in his licence, which was granted by the Mamlatdar, Chorasi". It is also stated that, "the papers pertaining to the same cannot be produced because of flood in Tapi river in August, 2000, that he has not transferred licence but has only got the name of the partner entered, that in the floods, his wife had drowned and she could not be traced till date, that since August, 2006 he had gone to stay with his family at Mumbai, but frequently he visits Surat and looks after business".

7. The learned Advocate for the petitioner submitted that for the reasons best known to the authorities, despite this report by the Collector, the Director, Food & Civil Supplies Department wrote another letter dated 12th May, 2009 to the Collector, Surat wherein contents of letter dated 10th November, 2008 are reiterated. Besides, in the first Para, it is added that "there is no provision in law for taking third party as a partner, that at the relevant time the Mamlatdar, Chorasi without taking prior permission of the Collector, Surat has added the

name of Shri Dhanraj Mohanlal Chandel as a partner in licence register".

The learned Advocate for the petitioner submitted that this shows that the entire matter is approached by respondent No. 1-Director, Food and Civil Supplies Department with a pre-determined mind and with pre-arrived conclusions and the ultimate goal is to get the name of the petitioner removed from the licence and the licence register under one pretext or the other. The learned Advocate for the petitioner submitted that the licence was issued in the year 1981. The petitioner's name was entered in 1985 with due approval from the Mamlatdar, Chorasi. The business place of the petitioner is visited on various dates (which are set out hereinabove). Not only that in the year 1991, the District Supply Officer has taken cognisance of the same and has condoned the so-called irregularity of the petitioner being entered as a partner, which is clear from order dated 22nd July, 1991, and thereafter, for the reasons best known to respondent No. 1, which in the opinion of the petitioner are for extraneous consideration, first a letter was written on 10th November, 2008, which was replied by the Collector on 28th March, 2009, again a letter is written on 12th May, 2009, wherein for the first time, it is stated and ground is taken that, "sanction/ approval accorded by the Mamlatdar, Chorasi was without prior permission of the Collector, Surat". This ground is stated in letter dated 12th May, 2009 for the first time to achieve the ultimate goal of deletion of the name of the petitioner from the licence and the licence register. Last, but not the least, by letter dated 20th June, 2009, the original licenceholder is asked to remain present on 7th July, 2009 with the original licence so as to delete the name of the petitioner. This is without any notice to the petitioner.

The learned Advocate for the petitioner submitted that the question is not whether the petitioner is having any constructive notice of the entire episode whether the authorities have deemed fit to give any notice to the petitioner when they propose to delete the name of the petitioner, which is otherwise found to be in accordance with law and conceded by the authorities in the year 1985 and if not at least in 1991.

8. The learned Advocate for the petitioner submitted that though the petition was filed on 1st July, 2009, the first notice was issued on 2nd July, 2009 returnable on 13th July, 2009. The learned Assistant Government Pleader was asked to take instructions in the matter, particularly, on the aspect which is mentioned in Para 1 of letter dated 12th May, 2009, page 102 and despite the fact that on 13th July, 2009, after perusing the original register showing approval granted by the licensing authority to the inclusion of the name of the present petitioner as a partner, the Court issued rule. Till date, respondent No. 1 has chosen not to file any reply to the petition. Even other respondents have also not filed reply to the petition.

(Emphasis supplied)

9. The learned Assistant Government Pleader submitted that on 13th July, 2009,

officers were present and they were asked to give detailed instructions so as to file reply to the petition. None of the officers have imparted any instructions to filed reply in this matter. The averments made in the petition remain uncontroverted.

The Court has no hesitation in drawing an inference that the officers have no material to defend an action which is, on the face of it, illegal and not able to stand the test of legality, they have not cared to give necessary instructions to the learned A.G.P.

10. The Court with pains records that there is a class of Government officers, who feel that, "the law is what they think". Unfortunately, that is not true, and therefore, the matter is required to be allowed in absence of any material to dislodge the existence of condition No. 13, in the original licence and there being no material to dislodge the entry made in the register of licence maintained by the authorities, a copy of which is produced at page 20.

11. The petition is allowed. Communications dated 12th May, 2009 and 20th June, 2009 are quashed and set aside. The respondents are restrained from deleting the name of the petitioner from licence No. 89 of 1981 as well as records maintained by the respondent authorities, except for any other valid ground/s which the authorities may discover hereafter, but only after following the procedure required under the law.

It goes without saying that once the name of the petitioner continues in the licence and also in the register of licence, the respondents are obliged to allow the petitioner to carry on his business under licence No. 89 of 1981. Rule is made absolute. No order as to cost. Direct Service is permitted.