
(1994) 11 AP CK 0008

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16904 of 1994

Filmore Service Station

APPELLANT

Vs

Joint Collector and Others

RESPONDENT

Date of Decision : 29-11-1994

Acts Referred:

Citation : (1995) 1 ALT 191

Hon'ble Judges : S. Parvatha Rao, J

Bench : Single Bench

Advocate : A.T.M. Rangaramanujam, for the Appellant; Govt. Pleader for Civil Supplies, for the Respondent

Final Decision : Dismissed

Judgement

S. Parvatha Rao, J.—The petitioner in this Writ Petition questions the order of the 2nd respondent i.e., the Assistant Supply Officer, Circle-I, Vijayawada, in his proceedings Re. No. 105/ASOI/94 dated 4-7-1994 suspending his retail licence No. 14 issued in the name of M/s Filmore Service Station which is valid upto 31-12-1996, "until further orders" in view of credible information and involvement in clandestine business.

2. The petitioner states that his service station was inspected by the 3rd respondent on 19-6-1994 without entertaining any reasonable belief that contravention of any of the provisions of the Essential Commodities Act, 1955 (hereinafter referred to as "the Act" for short) or the Andhra Pradesh Petroleum Products (Licensing and Regulation of Supplies) Order, 1980 (for short "the Order") had taken place and that 4,852 Lts. of petrol and 17,709 Lts. of High Speed Diesel Oil were seized. It is not in dispute that enquiry u/s 6-A of the Act is in progress. In the present Writ Petition the search and seizure conducted by the 3rd respondent is not questioned. Therefore, it is not necessary for me to inquire into the circumstances under which, and the reasons for which, search and seizure was done by the 3rd respondent.

3. The learned counsel for the petitioner questions the order of suspension dated 4-7-1994 on the ground that the 2nd respondent has no authority to issue the same and also on the ground that principles of natural justice were violated in issuing the same as no notice or opportunity was given to him before the said suspension order was made.

4. Notice before admission was ordered in the Writ Petition on 27-10-1994. The 3rd respondent filed his counter-affidavit on 27-10-1994. Even at the time when notice before admission was directed in this Writ Petition, it was pointed out to the learned Government Pleader for Civil Supplies that it was not stated in the impugned order of suspension that any enquiry against the petitioner was pending; and by 7-11-1994 respondents 1 and 2 were directed to file counters and produce the records. The 2nd respondent filed counter-affidavit on 17-11-1994. Tine records are also produced by the learned Government Pleader.

5. On the question whether the 2nd respondent has the authority to issue the impugned suspension order, it is stated in the counter-affidavit of the 2nd respondent that the District Collector, Krishna in his letter dated 13-7-1985 authorised the Assistant Supply Officer to issue retail licences for petroleum products and that the said instructions were again reiterated in the Circular No. A6/790/94 dated 7-5-1994 issued by the Joint Collector, Krishna. It is also stated that the petitioner's licence was in fact renewed by the Assistant Supply Officer up to 31-12-1993 and subsequently it was further renewed upto 31-12-1996 and that the petitioner himself is fully aware that the 2nd respondent is the licensing authority. The learned counsel for the petitioner, in the circumstances, does not press this contention.

6. As regards prior notice and opportunity before issuing the impugned suspension order, the stand taken in the counter-affidavit of the 2nd respondent is as follows:-

"It is further stated that the holder of a licence under the above said order shall not contravene attempt or abet the contravention of any of the provisions of the order or any of the condition of the licence issued thereunder and if so contravened, the licensing authority may suspend such licence and attach the business activities to some other dealer. There is no necessity according to Clause 28 of the A.P. Petroleum Products (Licensing and Distribution) Order, 1980 to issue a show-cause notice before issuing suspension order."

This means he is trying to justify the impugned suspension order on the basis that it was issued under Sub-clause (1) of Clause 28. That is doubly wrong.

7. Before proceeding further, it is necessary to examine Clause 28 of the Order which is 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 interim suspension of the licence, registration certificate or supply card."

8. A reading of Sub-clause (1) of Clause 28 shows that it provides for cancellation or suspension of a licence or registration certificate or supply card issued under the Order. Such cancellation or suspension has to be by an order in writing by the Licensing Authority. The important aspect to be noticed is that suspension under the said Sub-clause (1) has to be "for such period as may be specified"; which means that the order imposing suspension of the licence etc, has to specify the period for which the suspension is to be effected. The period cannot be indefinite because the order contemplated under the said Sub-clause (1) is a final order. If the order of suspension states that the licence is suspended "until further orders" it follows firstly that it is not a final order, and secondly that it is not an order of suspension for a specified period, and therefore such an order cannot be one made under Sub-clause (1) of Clause 28. The impugned suspension order states that the petitioner's retail licence No. 14 "is hereby suspended.....until further orders". Therefore, from what I stated above, it follows that it is not made under the said Sub-clause (1).

9. Even assuming that the impugned suspension order is one under Sub-clause (1) of Clause 28, I am of the view that the 2nd respondent is not right in asserting that no show-cause notice need be issued before making such a final order of suspension. No doubt, the proviso to the said Sub-clause (1), as it stands today, does not refer to "proposed suspension" because the words "or suspension" occurring at the end of the said proviso after "the proposed cancellation" were omitted by G.O. Ms. No. 1730, F & A (CS-II) dt. 21-11-1986. But that does not mean that there need not be any show cause notice and that principles of natural justice and fair-play need not be followed or have no place in ordering suspension of licence etc., under the Order for a specified period as a punishment. Such a suspension order results in civil consequences to the affected party and therefore, I am of the view that a show-cause notice and reasonable opportunity are a must before such a suspension order is made. It may be that all that is required under the said proviso need not be followed. The proviso requires that the licensee or the holder of registration certificate has to

be given not merely a reasonable opportunity for representing his case, but also should be given a personal hearing against the proposed cancellation. That personal hearing may not be necessary in the case of the proposed suspension. That is different from saying that no show-cause notice and no reasonable opportunity need be given to the licensee or the holder of registration for representing his case against the proposed suspension. Therefore, I am of the view that even if the impugned suspension order is to be treated as one under the said Sub-clause (1), it is bad for violating principles of natural justice and fair play as admittedly no show-cause notice or opportunity was given to the petitioner before it was made.

10. But, I have already expressed my view that the impugned suspension order cannot be one under Sub-clause (1) of Clause 28 firstly because it does not specify any period for which suspension is made, and secondly because it is an order made "until further orders", which means that it is not a final order and that it is only an interim order. 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-clause (2); firstly, it can be made only "pending action as in Sub-clause (1)", and secondly "for reasons to be recorded in writing". The impugned suspension order is in writing and some reasons are given therein. But the other requirement is clearly not satisfied in the present case. A Division Bench of this Court in *Commissioner of Civil Supplies, Hyderabad v. Radha Automobiles*, Judgment in W.A. No. 1096 of 1987 dt. 5-6-1990 set aside an interim suspension order on the ground that it did not satisfy that requirement holding as follows:-

"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."

Therefore, the impugned suspension order cannot stand viewed from any point of view.

11. There is a further development in this case. Though no mention has been made in the counter affidavit of the 2nd respondent about any show-cause notice having been issued to the petitioner, the record discloses that a show-cause notice bearing No. 105/ASOI/94 dated 4-11-1994 was issued. The record also contains a xerox copy of the show-cause notice showing that it was served on the petitioner only on 18-11-1994 and that the said xerox copy was sent to the office of the Government Pleader along with a covering letter dated 18-11-1994. The counter-affidavit of the 2nd respondent is dated 10-11-1994. If really a show-cause notice dated 4-11-1994 was ready for service on the petitioner on 4-11-1994 itself as the date of the said show-cause notice purports to suggest, it

is incomprehensible why the 2nd respondent had not made a mention about it in the counter-affidavit dated 10-11-1994. The inference therefore is that it is an ante-dated show cause notice served on 18-11-1994 on the petitioner after filing of the counter-affidavit in view of the advice received from the Government Pleader. This shows an utter disregard of Sub-clause (2) of Clause 28 by the 2nd respondent.

12. Thus, even assuming that the said show cause notice was prepared on 4-11-1994 itself, it is obvious that as on the date of the impugned suspension order i.e., 4-7-1994, no proceedings under Sub-clause (1) of Clause 28 were initiated. Therefore, the suspension order impugned in this Writ Petition is bad and not in accordance with law and, properly speaking, it has to be set aside. However, in view of the fact that as on today enquiry under Sub-clause (1) of Clause 28 has been initiated, I am not inclined to exercise my discretion to set aside the impugned order of suspension. I am supported in this by the judgment of a Division Bench of this Court in J. Subrahmanyam v. Joint Collector, Nellore and Anr., Judgment dated 11-11-1993 in W.A. No. 1295 of 1993 and W.P. No. 969 of 1993.

13. The 2nd respondent is directed to complete the enquiry initiated under show cause notice in Re. No. 105/ASOI/94 dated 4-11-1994 under Sub-clause (1) of Clause 28 of the Order within eight weeks from the date of receipt of a copy of this orders and pass appropriate orders in accordance with law.

14. For the reasons stated above and subject to the above direction the Writ Petition is dismissed at the admission stage.

15. The facts of this case warrant the Joint Collector requiring atleast an explanation for the 2nd respondent. The Office is directed to send a copy of this order to the Commissioner of Civil Supplies Andhra Pradesh, Hyderabad.