

(2012) 02 MP CK 0145

In the Madhya Pradesh High Court

Case No : Writ Petition No. 10570 of 2011

Gurunanak Prathmik Upbhokta Bhandar

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 01-02-2012

Acts Referred:

Citation : (2012) ILR (MP) 1555

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : Sanjay Bahirani, for the Appellant; S.P. Rai, P.L. and A.K. Pare for the Intervenor, for the Respondent

Final Decision : Allowed

Judgement

K.K. Trivedi, J.—This order will also govern disposal of W.P. No. 10572/2011 and W.P. No. 10574/2011 because the facts and the impugned order passed in the said cases are identical. However, for the purposes of this order, the facts are taken from W.P. No. 10570/2011. The petitioner, a semi wholesale dealer of kerosene, has come before this Court ventilating its grievance against the order dated 31.05.2011 passed by the respondent No. 2 by which the semi wholesale dealership of the petitioner has been cancelled and it has been directed that the kerosene be distributed through the wholesale dealer to the fair price shop for sale of the same to the consumers. The contention of the petitioner is that the semi wholesale dealers were appointed in terms of the policy made by the State Government for distribution of the kerosene within the rural areas. Later on a policy was made by the State Government that the semi wholesale dealer shall not be appointed. The respondent No. 3 filed a writ petition in public interest before this Court in which the policy of the State Government was called in question. Considering the contentions raised, as also the reply given by the State Government that after making of the new policy, no semi wholesale dealers were appointed after 1999, this Court passed the order while disposing of the said writ petition on 26.10.2009 in the following manner:

Regard being had to the totality of circumstances, we command that the price of kerosene at any cost shall not exceed the price fixed by the Central Government and no semi whole sale dealer shall be appointed where whole sale dealers are functioning as 1999 circular holds field. The price declared by the Collector shall always be subject to maximum price fixed by the Central Government.

2. Pursuant to the said order, it is alleged that a show cause notice was given to the petitioner, of which a reply was filed but without taking any action under the provisions of Madhya Pradesh Kerosene Dealers Licensing Order, 1979 (herein after referred to as "Licensing Order"), the order was passed against the petitioner cancelling the licence of distributorship of the petitioner, which was required to be challenged in W.P. No. 18911/2010. The said writ petition came up for hearing before this Court on 10.01.2011. Since it was found that no opportunity of hearing was extended to the petitioner and the impugned order run de hors to audi alteram partem, this Court was of the opinion that the order impugned passed on 23.11.2010 be kept in abeyance, an opportunity of hearing to the petitioner be given and a fresh order be passed against the petitioner, if necessary as per the provisions of the Licensing Order, referred to herein above. It is the case of the petitioner that a show cause was issued to the petitioner again quoting the order passed by the Division Bench of this Court in the P.I.L. filed by the respondent No. 3 and a reply of the same was filed by the petitioner. It was the case of the petitioner that for the rural areas semi wholesale dealers were still to continue as per the scheme and since the petitioner was working as a semi wholesale dealer in the rural area, even under the scheme or in terms of the order passed by this Court, licence of the petitioner was not required to be cancelled.

3. This is also stated by the petitioner that since in the aforesaid writ petition filed by the respondent No. 3 as P.I.L. a specific stand was taken by the State Government by filing a return, it was not open to the respondents now to take an U turn now and refute such a stand. The return of the respondents in that respect, which was filed before the Division Bench of this Court in the aforesaid P.I.L. of respondent No. 3, also contemplates the same condition. It was categorically contended by the State Government that only in the headquarters where there were no wholesale dealers, the semi wholesale dealers were being allowed to distribute the kerosene oil to the retailers. It was categorically said that semi wholesale dealers were allowed to supply kerosene oil only in remote areas as per the scheme. Since this was the stand of the State Government before this Court, it was not open to respondent No. 2, Collector, to cancel the licence of the petitioner without again conducting an enquiry to the effect whether the petitioner was working in the remote area or was carrying on the business in the district headquarter. Thus, it is contended that the order impugned passed by the respondent No. 2 is bad in law and is liable to be quashed.

4. On service of the notice of this writ petition, the respondents No. 1 and 2 have

filed their return. It is contended by the respondents that in terms of the directions issued by the Division Bench of this Court in the P.I.L. of respondent No. 3, the State Government was required to keep price of the kerosene at such a level that it shall not exceed the price fixed by the Central Government and the other part of direction was that no semi wholesale dealer shall be appointed where wholesale dealers are functioning. It is further contended that entire exercise was done. The case of the petitioner was examined and after holding that the petitioner cannot be allowed to continue to function in terms of the order passed by this Court, the licence of the petitioner was cancelled. It is contended that a show cause was given to the petitioner and after receiving the reply from the petitioner, the order has been passed after hearing the petitioner and, therefore, it cannot be said that the order impugned is bad in law. The respondents have prayed that the writ petition be dismissed.

5. Heard learned Counsel for parties at length and perused the record.

6. Undisputedly the policy has been made by the State Government in terms of the provisions of supply order. The semi wholesale dealer is prescribed in the said scheme. It is categorically said that the semi wholesale dealers have to function only in the areas where wholesale dealers are not appointed at the headquarters. In the very same scheme it is further said that in case wherever the need is felt, only the cooperative societies are to be appointed as semi wholesale dealer. Thus, it is clear that semi wholesale dealers were not to be removed from the distribution scheme as a whole. The Division Bench of this Court has also considered this aspect and this much only has been said in the order passed by this Court that no semi wholesale dealer shall be appointed where wholesale dealers are functioning in terms of the provisions of circular of 1999. What was the need of issuing the show cause notice to the petitioner when the order passed by the Collector was set aside by this Court and whether the petitioner was functioning in a area where the wholesale dealer has already been appointed, was not mentioned in the show cause notice and, therefore, the show cause itself was vague. The reply was submitted by the petitioner categorically pointing out the fact that the appointment of semi wholesale dealer has not been put at knot by this Court while passing the order in the aforesaid P.I.L. On the other hand, it was categorically contended by the petitioner that the semi wholesale dealers were appointed in the said district only because wholesale dealers were not making proper supply of kerosene in the remote areas. It was further categorically said that at district headquarter no semi wholesale dealer was appointed. The petitioner has annexed with its reply to show cause notice, an order issued by respondent No. 2 on 23.06.2003 in which it was categorically said that the wholesale dealers were supplying kerosene to the Sewa Sahkari Samiti, who were not distributing the kerosene on all centers and the same were kept only up to the head office of the Sewa Sahkari Samiti. The consumers of kerosene from the rural areas were required to come to such distant place at head office of the Samiti for obtaining the kerosene and, therefore, distribution of kerosene on all sub centers be got done through the semi wholesale dealers.

This fact was brought to the notice of the District Cooperative Central Bank so that the societies affiliated with the Bank may also be directed accordingly. It was further contended by the petitioner that the appointment of petitioner as a semi wholesale dealer was prior to coming into force of 1999 Scheme and in the said scheme there was no provision made for cancellation of licence of those, who were earlier granted the licence of distribution of kerosene as semi wholesale dealer. Therefore, it was said that the show cause notice issued to the petitioner was bad in law. The circular dated 05.09.2009 (Annexure P-12) was also brought to the notice of Collector whereby the Commissioner of Food & Civil Supplies and Consumer Protection, Madhya Pradesh, Bhopal, has pointed out that semi wholesale dealer is also an important integral part of the scheme of distribution of kerosene, therefore, appointment of semi wholesale dealers in rural area was correct. It was stated in that order that the opinion with respect to such a scheme of the State Government was being sent. The petitioner further contended that a proposal was given that transportation charges may be reduced so that the cost of kerosene, even after supply of the same by semi wholesale dealer, may not rise above the price fixed by the Central Government.

7. From the aforesaid facts, it is clear that a detailed enquiry was required to be conducted by the respondent No. 2 to the effect whether the petitioner was distributing the kerosene within the headquarter area or was distributing the kerosene only in the remote area. It was to be examined whether continuance of the petitioner as a semi wholesale dealer was desirable as per the scheme of the State Government, indicated in the order dated 05.09.2009. A perusal of the order passed by the respondent Collector makes it clear that nothing has been considered by the said authority, no finding has been recorded that the petitioner is functioning as a semi wholesale dealer within the headquarter area and not in the rural area. No finding is recorded as to the scheme of the State Government and simply it is said that the reply of the petitioner is not satisfactory, therefore, the supply of kerosene to the petitioner is stopped with immediate effect and in place of the petitioner, the wholesale dealer will continue to distribute the kerosene to the retail shop for supply of the same to the consumers. The order impugned is, thus, not a speaking order in true sense. The meaning of speaking order is that if a plea is raised, the same has to be decided and a finding is required to be given. In absence of any finding, it is deemed that such an objection or a plea raised by the aggrieved is rejected. However, there is again no reasons for rejection. The other aspect is that once the State Government has already taken a plea before this Court that semi wholesale dealers are to be appointed in the remote area and such a plea has been accepted by this Court and a direction in that respect is issued, without holding any enquiry, without recording any finding whether the petitioner was working in the same area where a wholesale dealer was functioning or not, the order could not have been passed by the respondent No. 2. If such an order is passed in such a manner, the only reasons, as have come in the return of the respondents, would be that it is only in alleged compliance of the order of this Court, without even examining that the

order would be applicable in particular case or not. By no stretch of imagination can it be interpreted from the order of this Court that there was a complete ban for appointment of semi wholesale dealers. Therefore, the order of respondent Collector cannot be supported in such circumstances nor can be given a stamp of approval by this Court. Consequently, the writ petition is allowed. The order impugned dated 31.05.2011 (Annexure P-1) is hereby quashed. The respondents are commanded to restore the supply of kerosene to the petitioner for distribution of the same in its capacity as semi wholesale dealer within the remote areas. There shall be no order as to costs.