

(2001) 01 GUJ CK 0044
In the Gujarat High Court

Case No : Special Civil Application No's. 343/99, 8945/98, 2147/97, 2148/97, 3271/97, 6409/97, 7586/97, 6112/97, 6113/97, 6114/97, 3048/97, 2926/97, 10976/98, 9457/98, 11065/98, 10134/98, 8586/97, 278/96, 3086/97, 3088/97, 14/99, 3 of 2000, 1931/97, 1993/97, 10394

Jethalal Manilal

APPELLANT

Vs

District Collector

RESPONDENT

Date of Decision : 20-01-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)
Essential Commodities Act, 1955 — Section 3

Citation : (2001) 01 GUJ CK 0044

Hon'ble Judges : M.R. Calla, J

Bench : Single Bench

Advocate : G.N. Shah, Harhsha Devani, A.G.P., M.B. Gandhi, K.B. Pujara, R.M. Chhaya and J.S. Yadav, J.S. Yadav, for Y.N. Oza, C.L. Soni, H.S. Mulia, R.C. Jani, N.K. Pahwa, K.V. Shelat and Asim Pandya, for V.H. Patel, Y.S. Lakhani, A.M. Dagli and M.R. Shah, for the Appellant;

Judgement

M.R. Calla, J.—In all these 34 Special Civil Applications - the petitioners claiming to be holders of licence for distribution of kerosene as

wholesaler or retailer or both have challenged the refusal to renew their licences as also the cancellation of licences in some cases. The challenge is

against the policy decision of the Govt. to eliminate the wholesalers vide order dt.3.4.1995 which was suspended on 4.1.1995 but was again

restored on 6.1.1997. Common grievance raised in these petitions is based on almost identical facts involving common questions for consideration

and in the context of the circular dt.30.7.1988. I therefore propose to decide all these 34 petitions by this common judgment and order as under:-

Special Civil Application No. 343 of 1999: (Mr.M.B.Gandhi for petitioner)

2. Mr.M.B.Gandhi for the petitioner submits that in this case, petitioner got the licence for distribution of Kerosene as well as Crude Oil in the year

1983 and he held such licence upto 31st December 1998. The petitioner applied for renewal of this licence before the expiry of the period on 18th

December 1998 and for that purpose, deposited a sum of Rs.140/-. Later on, he was asked to deposit an additional amount of Rs.110/- and such

additional amount of Rs.110/- was deposited on 22nd December 1998. However, the licence was not renewed and in January 1999, the

petitioner was told that in view of the change in the policy, the licence cannot be renewed. The Govt. of Gujarat had issued a circular on 30th July

1988 and while making reference to the said circular dated 30th July 1988, it has been submitted that the holders of the licence as wholesalers

prior to 1985 shall be allowed to continue as wholesalers. However, on 3rd April 1995, a letter was sent by the Addl. Chief Secretary to all the

Collectors in the State of Gujarat notifying a change in the policy decision in the matter of grant of licences and according to this policy decision,

the earlier system by which the supply of Kerosene by the Oil Companies to its own authorised dealers and agents and from such authorised

dealers and agents to supply the same to the wholesalers and from wholesalers, it was to be supplied to retailers from whom it was to go to the

consumers was sought to be changed and thereby the wholesalers were to be eliminated from this system. This change in the policy decision of

eliminating the wholesalers has given rise to several petitions being filed before this Court and it is given out that the Government, later on, issued

another order dated 4th January 1996 suspending the order dated 3rd April 1995 and on that basis, certain petitions were withdrawn, in certain

cases, the matters were remanded on the ground that the opportunity of hearing had not been afforded and the orders be passed afresh after

affording an opportunity of hearing and it is given out that certain other matters which were filed at that time against the order dated 3rd April 1995

are still pending before this Court. On 6th January 1997, yet another order was issued bringing out a new policy incorporating the policy decision

as was contained in the order dated 3rd April 1995 meaning thereby that the wholesalers were to be eliminated and the order dated 3rd April

1995, therefore, in substance, stood revived and the order which was passed on 4th January 1996 suspending the effect of the order dated 3rd

April 1995 came to an end. The net result was that the decision to eliminate the wholesalers became effective under the new policy dated 6th

January 1997.

3. The present Special Civil Application No.343/99 was filed on 16th January 1999. The proceedings recorded on 18th January 1999 show that

the time was sought for production of the order dated 3rd April 1995. The petitioner then filed an affidavit-in-reply dated 2nd February 1999

stating therein that such circular had not been made available to him despite the demand made by the petitioner before the Mamlatdar and the

Collector. The notice was then issued on 4th May 1999 and thereafter the petitioner sought amendment which was granted on 7th July 1999 and

the Rule was issued. The service of the Rule was waived by Mr.Mukesh Patel, learned AGP on behalf of the respondents nos.1 and 2. It further

appears from the proceedings that on 9th September 1999 the leave was granted to add the Indian Oil Corporation Ltd. as respondent no.3 and

the ad-interim relief was also granted. It may also be mentioned that a Civil Application No.1169 of 2000 was moved in this matter by the Indian

Oil Corporation Ltd. for vacation/modification of the above ad-interim order and by an order dated 27th March 2000 passed in this Spl.C.A., the

ad-interim order dated 9th September 1999 was vacated.

4. Thereafter, the petitioner filed Letters Patent Appeal No.163 of 2000 before the Division Bench challenging the order dated 27th March 2000

by which the ad-interim order had been vacated. The Division Bench, while deciding the Letters Patent Appeal, disposed of the same with the

permission to the appellant (present petitioner) to again approach the Single Judge for seeking certain directions with the prayer for maintaining

parity with other cognate matters. This order was passed by the Division Bench on 10th May 2000 and on that basis, the petitioner again moved a

Civil Application No.4359 of 2000. In this Civil Application, the notice was issued and the list of other identical matters was directed to be

produced by both the sides to consider the question of maintaining parity because parity could be maintained either by continuing the ad-interim

order in this case or by vacating the interim orders passed in other cases.

Thereafter when the group of matters was listed on 8th September 2000

before this Court as per the particulars supplied by the parties, a request was made by both the sides that all these matters may be finally heard.

Accordingly, it was directed that all these matters be listed for final hearing and this is how these matters have been listed for final hearing.

5. The order dated 3rd April 1995 and the non-renewal of the licence has been challenged and a prayer has also been made that the respondents

be directed to renew the licence and release the quota of Kerosene in favour of the petitioner for January 1999 and onwards and the licence

application which has been made for renewal for the period from 1.1.1999 to 31st December 2003 may be directed to be accepted. Mr.Gandhi

has challenged the order dated 3rd April 1995 and the non-renewal of the licence on the ground that the same is violative of Articles 14 and 19(1)

(g) of the Constitution of India, that the notice was required to be given to the petitioner and objections should have been invited before the

change, publicity should have been given with regard to the change in the policy and that since the petitioner was a holder of the licence since

1983, i.e. even prior to 1985, his licence as a wholesaler could not be refused for renewal in terms of the circular dated 30th July 1988.

Special Civil Application No.8945 of 1998: (Mr.K.B.Pujara for the petitioner)

6. Mr.K.B.Pujara on behalf of the petitioner has submitted that the petitioner in this case had been given the licence as a wholesaler on 1.1.1983

and the licence was renewed every time after an interval of four years, i.e. in the first instance in 1987 upto 31st December 1992 and lastly upto

31st December 1997. However, the licence for the period beyond 1997 was not renewed on the ground that there was a change in the policy on

the basis of the order dated 3rd April 1995 which was earlier suspended on 4th January 1996 but the new policy was introduced on 6.1.1997

incorporating the conditions of order dated 3rd April 1995 and thus the wholesalers were sought to be eliminated. The present petition, i.e.

Spl.C.A.No.8945/98 dated 13th October 1998 was filed on 15th October 1998 wherein the notice was issued on 16th October 1998 and the

same was made returnable on 6th November 1998. Thereafter, the matter came up on 3rd December 1998 on which date the Id. AGP placed on

record copies of the orders dated 17th November 1997 and 6th January 1997

passed by the Food and Civil Supplies Department and thereupon an amendment dated 8th December 1998 was moved before the Court on 10th December 1998 and the learned Counsel has submitted that this amendment which was moved on 10th December 1998 was granted by the Court on the very day. However, I do not find any such order sheet in the proceedings and therefore, it is hereby ordered today with the consent of Id. AGP that such amendment may be deemed or treated to have been granted as the same had already been carried out in the petition. Thereafter the petitioner received a communication dated 1.12.1998 on 10th December 1998 and he moved yet another amendment dated 14th December 1998 which is tendered on 16.12.1998 and the same has been allowed today whereby the communication dated 1.12.1998 refusing the renewal of the licence has been challenged. The proceedings dated 24th December 1998 show that an interim order was also passed on that date directing the respondents to supply the Kerosene to the petitioner as was being done without any interruption. It is also given out by learned Counsel for the petitioner that on 7th September 1998, his licence as wholesaler was renewed upto 31st December 1998 on the basis of the order dated 17th August 1998 passed in Special Civil Application No.1782 of 1998 which had been earlier filed by the petitioner challenging the non-renewal beyond 31st December 1997. Learned Counsel for the petitioner has submitted that according to Clause (5) of the Control Order (page 611, Vol.5 of Local Acts at page 617), the licence was required to be renewed for a period of five years, yet it was renewed upto 31st December 1998 whereas it ought to have been renewed upto 31st December 2002, because this time, it was granted upto 7th September 1998, it should have been, as a matter of fact, upto 7th September 2003.

7. Learned Counsel while adopting the arguments which have been raised by Mr.Gandhi, has further submitted that the policy as was contained in order dated 30th July 1988 was a detailed one and the same could not be brushed aside or chased in a cursory or casual manner by issuing a letter dated 3rd April 1995. Learned Counsel has submitted that he too was a licence holder and therefore, the renewal could not be refused in his case also in terms of the circular dated 30th July 1988 and that the same was refused without hearing him, the order seeks to prohibit the petitioner from

doing the business, the same was violative of Articles 14 and 19(1)(g) of the Constitution of India, his right to carry on the business could not be

curtailed nor the same could be restricted or impaired and that the promise as had been made through the circular dated 30th July 1988 had to be

honoured and the respondents were estopped from now taking the stand that the renewal could not be granted when on the face of the contents of

the circular dated 30th July 1988 the petitioner's licence as a wholesaler had to be continued. Learned Counsel for the petitioner has placed

reliance on a decision of this Court in the case of Rameshbhai V.Parikh v. Sr.Superintendent of Post Office,Mehsana reported in 1997 (2) GLH

298 and a decision of the Supreme Court in the case of Raj Restaurant and Another Vs. Municipal Corporation of Delhi, .

Special Civil Application No. 2147 & 2148 of 1997: (Mr.R.M.Chhaya for the petitioners)

8. Mr.R.M.Chhaya appearing on behalf of the petitioners in these two cases has submitted that these petitioners are also pre-1985 licence holders

as wholesalers and in these two cases, the licences had been renewed upto 31st December 2000. Learned Counsel for the petitioners has

submitted that these petitioners held the licences as retailers as well as wholesalers and on the basis of the circular dated 4th October 1990, an

option was given to the petitioners to choose either to hold the licence of a wholesaler or a retailer and at that time, the petitioners opted for the

licence as wholesalers because in terms of the order dated 4th October 1990, the two licences could not be allowed to be held and the Central

Government had issued a circular that the supply of the Kerosene has to be done exclusively through four Oil Companies, namely, Indian Oil

Corporation Ltd., Bharat Petroleum Corporation Ltd., Hindustan Petroleum Corporation Ltd., and Indo-Burma Petroleum Corporation Ltd.

Special Civil Applications Nos.3271, 6409, and 7586 of 1997: (Mr.R.M.Chhaya for the petitioners)

9. In these three cases, the petitioners were licence holders as wholesalers since the period prior to 1985 and their licences had been renewed

upto 31st December 1997 and the renewal was not granted thereafter, i.e. beyond 31st December 1997. Mr.Chhaya appearing for the petitioners

has submitted that these three cases are identical to the Special Civil Applications Nos.343 of 1999 and 8495 of 1998. He has adopted the

arguments as were advanced by Mr.Gandhi and Mr.Pujara. These three petitions were filed on 23rd April 1997 (SCA No.3271/97), 1st

September 1997 (SCA No.6407/97) and on 13th October 1997 (SCA No.7586/97) wherein the Rule was issued on 25th April 1997, on 14th

October 1997 after notice, and on 14th October 1997 respectively and it appears that the ad-interim relief had also been granted. In these three

cases, affidavits-in-reply dt.15th March 1999 have been filed by Shri P.L.Zala, Under Secretary, Food and Civil Supplies and Consumer Affairs

Deptt. relying upon the new policy not to renew the licences after the expiry of the period of licence.

During the course of arguments, it was also pointed out that the Food and Civil Supplies Department had sent a letter dated 22nd January 1999 to

all the Collectors in the matter of wholesale supply of Kerosene except through the Companies" agents because of the re-constitution of the

Districts and Talukas and it was held out that certain wholesalers other than the Company agents were also holding licences as retailers and in view

of the Government circular dated 4th October 1990, both the licences, i.e. as wholesaler and retailer could not be held and for that reason if any

person had given up the licence as retailer and had opted to be a wholesaler only and even in such cases, the licences as wholesaler have not been

renewed and the result is that they are left without any licence whatsoever. To cover such cases, it had been decided that those persons who are

having both the licences, i.e. as wholesaler as well as retailer and who had opted as wholesaler after the order dated 4th October 1990 and had

given up the licence as retailer, such persons on the expiry of their period of licence as wholesaler, in case apply as retailer, their application for

licence as retailer may be considered. When the argument was raised with reference to this letter dated 22nd January 1999, a copy of the same

was produced by the Id.AGP and the same is hereby taken on record.

Dt:19.1.2001

Special Civil Application No. 6112 of 1999: (Mr.J.S.Yadav for the petitioner)

10. The petitioner of this petition has been doing business of selling kerosene as a wholesale dealer since many years and is an agent of Oil

Company and has Agency. He held a licence as a wholesaler as well as retailer. In the year 1991 he was given option to hold the licence either as

a wholesaler or as a retailer. In December 1995, when the licence as a wholesaler was going to expire, the petitioner had moved an application for renewal of the licence in November 1995 and paid the renewal fee. However, no reply or decision was taken and a show cause notice was given

on 27.3.97 and after the reply to the show cause notice, the District Supply Officer, cancelled the licence on 29.5.97. Against this decision, an

Appeal was preferred to the Collector in July 1997, but the Appeal was rejected.

Special Civil Application No.6113 of 1997. (Mr.J.S.Yadav for the petitioner)

11. The petitioner in this case is also claiming to be engaged in the business of sale of kerosene for number of years and claims to be an agent of an

Oil Company, having agency of the Oil Company. He also holds a licence as a wholesaler and as a retailer. In the year 1991, he was also given

option to opt for the licence as a wholesaler or as a retailer and the petitioner opted for the licence as a wholesaler. In December 1995, he had

moved an Application for renewal of the licence and has also paid the renewal fee, but no reply was given. The show cause notice was given on

27.3.97 and he filed reply to the same. The District Supply Officer has cancelled the licence on 29.5.97. On 1.7.97 the petitioner appealed against

the aforesaid order of 29.5.97 passed by District Supply Officer before the Collector, but the Appeal was rejected on 21.7.97.

Special Civil Application No.6114 of 1997. (Mr.J.S.Yadav for the petitioner)

12. This petitioner also claims to be in the business of kerosene since 35 years and that he held the licence as a wholesaler as well as, as a retailer.

In the year 1991 he was given the option to choose between the licence as a wholesaler or as a retailer. He retained the licence of wholesaler and,

therefore, his licence as a retailer was cancelled. The licence as a wholesale dealer granted to him was valid upto December 1995 and, therefore,

he moved an application for renewal, but no reply thereof was given. Instead a show cause notice was given on 27.3.97 as to why the licence may

not be cancelled. After the reply to the aforesaid show cause notice, the licence was cancelled by the District Supply Officer on 29.5.97, against

which an Appeal was preferred before the Collector. The Appeal was admitted but stay was not granted. Rather to say it was not refused nor

granted and hence the present petition.

Special Civil Application No.3048 of 1997. (Mr.J.S.Yadav for the petitioner)

13. The petitioner in this case held the licence as a retailer since 1981 and as a wholesaler since 1982. The petitioner was asked to opt between the two licences, as aforesaid, and the petitioner opted for the licence as a wholesaler. The retailer's licence was cancelled on 10.6.91, while the licence as a wholesaler was going to expire on 31.12.96. In the first week of December 1996, he moved an application to renew the licence, which has not been decided so far. It is the case of the petitioner that instructions were given by the Collector that where there is no agency of any Oil Company, the licence as a wholesaler be continued. The licence held by the petitioner expired on 31.12.96 and notice for cancellation was given on 27.3.97, but the supply was continued till the filing of the petition and, thereafter, under the orders of this Court.

Special Civil Application No.2926 of 1997. (Mr.J.S.Yadav for the petitioner)

14. The petitioner claims to be engaged in the business of kerosene since last 20 years and holds the licences as wholesaler as well as retailer. In

1991 he was required to give option. The petitioner exercised the option to hold the licence as a wholesaler and, therefore, the licence as a retailer

was cancelled in June 1991. Since the licence as a wholesaler was to expire on 31.12.95, an application was moved in December 1995 for

renewal of the licence. The renewal was not granted. The licence as such expired on 31.12.95 but the supply was continued even without any

order from the Court. On 27.3.97 the notice for cancellation was issued and at this juncture the present petition had been filed.

Special Civil Application No.10976 of 1998 (Mr.J.S.Yadav for the petitioner)

15. The petitioner in this case claims to be engaged in the business of selling kerosene since 1984. He holds both the licences i.e. as a wholesaler

as well as, as a retailer. In the year 1991 the option was given to him to choose between the licence either as a wholesaler or as a retailer. The

petitioner opted for wholesalership and this wholesalership licence was valid upto December, 1998, to be more precise upto 31.12.98. On

14.12.98 the petitioner moved an application for renewal of his licence but the District Supply Officer, Himatnagar orally refused to renew the

licence, although, the renewal fee was paid. The licence was deemed to be continued till the present Special Civil Application was filed.

Special Civil Application No.9457 of 1998. (Mr.J.S.Yadav for the petitioner)

16. The petitioner in this case has claimed that he is doing the business of sale of kerosene as the agent of I.O.C. since 1965 i.e. since 32 years.

The petitioner claims that he is holding the licence under Order of 1981 since 1986 and his licence was renewed from time to time upto December

1995. In December 1995 he also paid the renewal fees. No reply was given. Instead a show cause notice dated 23.7.97 was issued to which the

petitioner filed a reply and, thereafter, the District Supply Officer passed the order cancelling the licence. Against this decision dated 29.5.97 taken

by the District Supply Officer, the Appeal was preferred before the Collector but the Appeal was rejected. The Revision was also preferred

before the State Government and this Revision was also rejected on 28.10.98. However, the supply has been continued.

Special Civil Application No.11065 of 1998 (Mr.J.S.Yadav for the petitioner)

17. The petitioner in this case is engaged in the business of kerosene as a wholesale dealer since 1993. On 12.12.98 he moved an application for

renewal of licences as the same was going to expire on 31.12.98 and for that purpose the renewal fee had been paid. However, no reply was

given to the petitioner. Nor any show cause notice was given nor any order was passed, because the Department had decided not to renew the

licence as a wholesale dealer and the concerned Mamlatdar had already refused to renew the licence in view of the Government decision.

Special Civil Application No.10134 of 1998 (Mr.J.S.Yadav for the petitioner)

18. The petitioner in this case has been doing the business of sale of kerosene since 1965 i.e. for a period of nearly 35 years and the petitioner

claims to be the agent of HPCL since 1965. In 1986 licence was given under Order of 1981 and this licence was renewed regularly upto 1995.

On 12/12/95 the petitioner moved an application for renewal and paid the fee, but the show cause notice was issued on 27.3.97 to which reply

had been filed and on 25.5.97 the District Supply Officer passed an order cancelling the licence of the petitioner as a wholesale dealer. The

petitioner preferred Appeal before the Collector on 17.6.97 and also filed additional submissions in support of his Appeal. However, on 9.7.97

the Collector rejected the Appeal and, thereafter, Appeal was preferred to Government on 21.8.97 and the same was also rejected on 28.10.98.

Special Civil Application No.8586 of 1997 Mr.J.S.Yadav for the petitioner)

19. The amendment dated 16.2.98 is allowed.

The petitioner in this case has been doing the business of kerosene and held licences as a wholesaler as well as retailer. The retailer licence was

cancelled in 1991. On 24.12.97 an application was moved for renewal of the wholesaler licence since it was to expire on 31.12.97 and for that

purpose renewal fee had already been paid but no reply was received and the present petition was filed on 27.12.97. On 30.12.97 the Court

directed to decide the renewal application and also directed to continue licence as a deemed continuance. On 1.2.98, the supply was stopped and

on 3.2.98 the licence was cancelled without any notice as required by Statute.

There is an affidavit-in-reply dt.14.11.1998 by Shri Harish J. Mangalam - Office at D.S.O. Himatnagar in this Spl.C.A. No.8586/97 and yet

another affidavit-in-reply dt.15.3.1999 by one Shri P.L.Zala, Under Secretary, Food, Civil Supplies and Consumer Affairs Deptt. I also find on

record a (common) affidavit-in-rejoinder dt.29.3.1999 filed in Spl.C.As.Nos.2926/97, 9457/98, 11065/98, 8586/97, 6112/97, 6113/97 and

6114/97 besides one more affidavit-in-rejoinder dt.30.3.1999 filed by the petitioner Bharatkumar N.Shah in Spl.C.A. No.8586/97.

Special Civil Application No.278 of 1996 (Mr.J.S.Yadav for Mr.Y.N.Oza for the petitioners)

20. Petitioners in this case held the licence as wholesalers as well as retailers in Kerosene since 1981. In the year 1991, the licences were renewed

upto 31.12.95. In December 1995, they moved an application for renewal and had also paid the challan fees.They were also given option to

choose to retain the licence either as a wholesaler or as a retailer and ultimately they were informed that their licences will not be renewed in

pursuance of the decision of the Government not to issue the licence to any licence holder who is neither a dealer nor an agent of any Oil Company

and hence the present petition has been filed.

Special Civil Application No.3086 of 1997 (Mr.C.L.Soni for the petitioner)

21. The petitioner in this case claims to be the wholesale dealer in kerosene, which was renewed upto 31.12.2000. On 10.3.97 a show cause

notice was issued for cancelling the licence. A reply to this notice was given in April 1997. The petitioner has stated that on 30.1.97 the Collector

had issued a letter directing the Mamlatdar to cancel the licence and through this

petition, Collector's notice dated 10.3.97 and letter dated 30.1.97 have been sought to be quashed and set aside.

Special Civil Application No.3088 of 1997 (Mr.C.L.Soni for the petitioner)

22. The petitioner in this case also claims to be in business of kerosene as a sub-dealer having licence as a wholesaler, which was renewed upto

31.12.2000. He says that he is in this business since 1972 and in the year 1982 he was given new licence and the stock of kerosene to the extent

of 15000 to 20000 liters was given to him by the Mamlatdar and he was selling kerosene to four kerosene Hawkers. The Collector issued a letter

dated 30.1.97 to the Mamlatdar directing him to cancel petitioner's licence as a wholesale dealer and a show cause notice dated 30.1.97 was also

given to him to which he filed reply in April 1997. Through this petition he has sought quashing and setting aside of the Collector's letter dated

30.1.97 and the show cause notice dated 10.3.97.

Special Civil Application No.14 of 1999 (Mr.H.S.Mulia for Mr.R.C.Jani for the petitioner)

23. The petitioner in this case claims to be in the business of distribution of kerosene and seeks to challenge the Resolution dated 6.1.97 and the

consequential instructions for not renewing the licence of the petitioner by Mamlatdar dated 17.12.98 and the Collector's order dated 30.12.98 on

the ground that five agents have already been appointed and the petitioner's licence could not be renewed (?) . The petitioner says that he had

already made the payment of the renewal fee to the Treasury/Sub-Treasury of Patan vide receipt dated 12.11.98. He claims to be the licence

holder since 1989.He also claims that he is the only licence holder in the village as well as for the surrounding villages and areas and that his licence

was to come to an end on 30.12.98 and,therefore, he applied for renewal and paid the necessary fees for renewal. Through this Petition he has

prayed for quashing and setting aside of the order dated 30.12.98 (Annexure E) and the order dated 17.12.98 (Annexure A1) passed by the

Collector and the Mamlatdar, Patan and that he may be allowed to continue to distribute kerosene as a licence holder.

Special Civil Application No.3 of 2000 (Mr.H.S.Mulia for Mr.R.C.Jani for the petitioner)

24. The petitioner in this case claims to be in the business of kerosene since

1984 and he is supplying kerosene to 12 villages. As his licence was going to expire on 31.12.99 he made an application for renewal of the licence for five years. Petitioner's application for renewal was rejected by stating that the parties are not the agents of the Oil Company. Through this petition the petitioner challenges the letters dated 6.1.97, 6.12.99 and 4.12.99.

Special Civil Application No.1931 of 1997. (Mr.N.K.Pahwa for the petitioner)

25. The petitioner claims to be in the business of kerosene for number of years. He held the licence as a wholesaler, which was renewed upto

31.12.2000. In fact, he held the licence as a wholesaler as well as retailer. After general instructions, which were issued on 4.10.90, the petitioner

surrendered the licence as a retailer. On 6.1.97 general directions were issued by Government for revoking the wholesaler licence or not to renew

them after the licence period is expired and an order was passed on 27.1.97 by the Mamlatdar directing the petitioner to obtain agency from Oil

Company within a period of 30 days, failing which the petitioner's licence will be cancelled. The petitioner filed the present petition challenging the

order dated 27.1.97 and the letter dated 6.1.97.

Special Civil Application No.1993 of 1997 (Mr.N.K.Pahwa for the petitioners)

26. The petitioners claim to be engaged in the business of kerosene for number of years holding the licence as a wholesaler, which was renewed

upto 31.12.2000. In fact the petitioners claim that they held the licence as a wholesaler as well as retailer, but after the issue of the general

directions on 4.10.90 by the Government, the licence as a retailer was surrendered. On 6.1.97 the general directions were issued by the

Government to revoke the licence of wholesalers and not to renew the same after the expiry of the period of licence and in January 1997, the

orders were passed directing the petitioners to obtain agency from the Oil Company within a period of 30 days, failing which the licence of the

petitioners shall be cancelled.

Special Civil Application No.10394 of 1999 (Mr.N.K.Pahwa for the petitioner)

27. The petitioner in this case claims that he had been granted licence for wholesale in Kerosene way back in 1983. His licence was renewed from

time to time and the last renewal was given in 1994, which was valid upto

31.12.99. On 7.12.99 he had moved an application for renewal of licence alongwith requisite fee, but the Mamlatdar rejected the application in view of the Government instructions dated 6.1.97 and hence the present petition was filed challenging the letter dated 6.1.97.

Special Civil Application No.10159 of 1998 (Mr.K.V.Shelat for the petitioner)

28. Petitioner in this case claims to be the holder of the licence as a wholesaler in kerosene since 1984, which was renewed from time to time and was valid till 31.12.98. On 18.9.93 the Deputy Secretary, Food & Civil Supplies, fixed the hearing in connection with some departmental proceedings against the petitioner. On the request of the petitioner to engage a lawyer, the matter was adjourned and next date was promised to be communicated. The State Government, however, dismissed the Appeal on 29.3.94. In April 1994, the petitioner filed Civil Suit No.176/94 challenging the decision of the State Government and prayed for the injunction directing the respondents - Government authorities to continue the supply the quota of kerosene. The trial court vacated the interim relief on the ground that the Civil Court has no jurisdiction. The petitioner, therefore, preferred Miss.Civil Appeal No.114/94, which was also dismissed and the petitioner filed Civil Revision Application No.824/95 before this Court. The Revision Petition was admitted after hearing the parties and an order was passed on 27.6.95 continuing the status quo which operated during the pendency of the Suit and the Appeal and, therefore, the licence as well as quota of supply of kerosene was continued. In 1997 lessor quota was given and the petitioner filed contempt application before the High Court against the Mamlatdar, Vagra and the respondent No.2 finally agreed before the Court to supply required quota regularly.The petitioner's case is that the respondent No.2 is having a strong bias against the petitioner and on 2.11.98 though the petitioner approached with challan for payment of renewal charges for the licence in question, the respondent No.2 did not accept the same. Through this petition, the petitioner has sought direction against respondent No.2 to accept the renewal fee and to renew the licence in accordance with law and that the action of the respondent in not accepting the renewal fee, as was sought to be tendered on 2.11.98, was illegal and that the respondents authorities may be directed to renew the licence.

Special Civil Application No.11006 of 1998 (Mr.Asim Pandya for Mr.V.H.Patel for the petitioner)

29. The petitioner claims to be a holder of the licence as a wholesaler since 1984, which was renewed on 10.12.93 upto 31.12.98. The petitioner

says that thereafter the Government had issued instructions to the Collector not to renew the licence to those persons who are not dealers or

agents of any Oil Company and this decision has been made the subject matter of challenge and a direction has been sought against the

respondents to renew the licence and for quashing and setting aside the decision of the respondents refusing to renew the wholesaler licence.

Dt:20.1.2001

Special Civil Application No.5 of 1996 (Mr.Asim Pandya for Mr.V.H.Patel for the petitioner)

30. The petitioner in this case has claimed that he was granted the licence as a wholesaler as well as retailer in business of kerosene in the year

1982. His retail licence was cancelled on 9th Dec.1992. Against this cancellation, he preferred appeal before the Collector, Kheda and the matter

was remanded by him on 5.1.1993. Thereafter, by an order dated 17th April 1993, the licence was cancelled and this order was again challenged

before the Collector, Kheda by way of appeal, who dismissed the appeal on 13th Dec.1993. The petitioner preferred revision application before

the Govt. and the Secretary, Food and Civil Supplies Department, by his order dated 9th May 1994 set aside the Collector's order and accepted

the revision application. Thereafter, a notice dated 26th/27th Sept.1995 was issued to the petitioner calling upon him to make a choice between

the wholesale and retail licence, but the petitioner requested for renewal of both the licences and filed separate applications on 27th Dec.1995 and

made payment of the renewal fee, but the renewal was not granted. The petitioner has also sought to amend the petition and such amendment was

granted on 30th Jan.1996. The petitioner has sought a mandamus for grant of renewal for further period of five years.

Special Civil Application No.9660 of 1999 (Mr.J.S.Yadav for the petitioner)

31. The petitioner in this case claims to be in the business of selling kerosene with a retailer's licence since 1972. In the year 1984-85 petitioner

was granted licence as a wholesaler also. On 1.1.1995 the petitioner was given

option to retain either of the two licences and the petitioner surrendered his licence as a retailer and continued with the licence of wholesale. His licence as a wholesaler was to expire on 31.12.99 and, therefore, he moved an application for renewal with licence fees on 27.10.99. On 28.10.99 he also made a separate application for licence. The petitioner says that he was told orally that his licence would not be renewed beyond 31.12.99 and hence the present petition was filed for setting aside the decision of the respondents to refuse the renewal of the licence as a wholesaler in kerosene.

Special Civil Application No.9663 of 1999 (Mr.J.S.Yadav for the petitioner)

32. The petitioner in this case held the licence for sale of kerosene as a retailer since 1984. In the year 1985, he also got the licence as a wholesaler. On 1.1.95 he was given option to choose to retain either of the two licences. The petitioner surrendered his licence as a retailer and choose to continue as a wholesaler. Whereas the licence as a wholesaler was to expire on 31.12.99, he applied for renewal on 17.11.99, but the Mamlatdar informed the petitioner on 25.11.99 that his licence as a wholesaler shall not be renewed beyond 31.12.99 and, therefore, the present petition was filed on 29.11.99 challenging the decision refusing to renew the licence Annexure "E".

Special Civil Application No.10865 of 1998 (Mr.Y.S.Lakhani for the petitioners)

33. The petitioner No.1 in this case was issued a licence as a wholesaler in kerosene by the competent authority in the year 1983 and the petitioners Nos.2 and 3 were issued licences by the competent authority in the year 1984 as wholesalers under the provisions of the Gujarat Essential Articles (Licensing Control and Stock Declaration) Order, 1981. The licences given to these petitioners were renewed from time to time. The licence of the petitioner No.1 was to expire on 31.12.97, but the same was renewed for a period of one more year and the same was due to expire on 31.12.98. The licences of petitioners Nos.2 and 3 were also to expire on 31.12.98. The petitioners Nos.1 to 3 applied for renewal of the licences, but the applications were not entertained and the licences were not renewed. Representations dated 26/27-10-1998 were then made. A reply dated 7.11.98 was received. Yet another representation was made on 14.11.98, followed by yet another representation dated

20.11.98. Since the licences were not renewed, the petitioners filed the present Special Civil Application on 18.12.98 for quashing and setting

aside the instructions contained in the letter dated 6.1.97 and the direction that the licences may not be renewed beyond 31.12.98.

Special Civil Application No.11164 of 1998 (Mr.Y.S.Lakhani for the petitioner)

34. The petitioner in this case claims that he was engaged in the business of dealing in kerosene since 1975-76. On coming into force of the

Gujarat Essential Articles (Licencing Control and Stock Declaration) Order,1981, a fresh licence was issued to him under the aforesaid Order,

which is operative since 1981. This licence was renewed lastly on 17.9.94 for the period upto 31.12.98. On 1.12.98 he applied for renewal

alongwith the requisite fees,but the Mamlatdar, Talaja, District Bhavnagar passed an order on 22.12.98 rejecting the renewal application making

reference to the Collector, Bhavnagar's letter dated 14.12.98. The petitioner, therefore, filed the present petition dated 28.12.98 for quashing and

setting aside the instructions contained in the letter dated 6.1.97 Annexure "E" and the consequential order passed by the Mamlatdar on 22.12.98

Annexure ""B"" and a prayer has been made that the licence be directed to be renewed for the period beyond 31.12.98.

Special Civil Application No.7621 of 1999 (Mr.A.M.Dagli for the petitioner)

35. The petitioner in this case claims to be the licence holder of the supply of kerosene as a wholesaler since 1983. The petitioner had applied for

renewal of the licence vide his application dated 29.12.97 for the period from 1998 to 2002.The notice was issued to the petitioner that the licence

shall not be renewed.The petitioner preferred Appeal and Revision before the Collector and the Food & Civil Supplies Department, but the prayer

was not accepted. The petitioner says that his prayer has not been considered although there was no Company dealer or wholesale dealer in the

Taluka and whereas no renewal had been granted to the petitioner, he preferred the present petition dated 21.9.99 with the prayer that the

instructions contained in the letter dated 6.1.97 may be quashed and set aside and a direction has been sought for renewal of the licence.

Special Civil Application No.11151 of 1998 (Mr.M.R.Shah for the petitioner)

36. The petitioner in this case claims that he held the licence for supplying kerosene as a wholesaler. His licence was going to expire on 31.12.98.

On 7.12.98 he applied for the renewal for a further period of five years from 1.1.99, but the renewal was not granted and he was informed by the

Mamlatdar, Lunawada that as per the instructions of the State Government and the Collector of Panchmahals licence was not to be renewed. The

petitioner, therefore, filed the present petition dated 29.12.98 for quashing and setting aside the decision to refuse to renew the licence and a

direction has been sought to continue the supply of kerosene to the petitioner as a wholesale dealer.

37. All these petitions have been contested by the respondents by filing affidavit-in-reply and in certain cases affidavit-in-rejoinder thereto have

also been filed as stated hereinabove in para 9 and 19. Ms.Harsha Devani, learned A.G.P. has made pointed reference to the affidavit-in-reply

filed in Special Civil Application No.8945 of 1998 and Special Civil Application No.343 of 1999 and it is submitted that the copies of the reply

have been given to the petitioners in all these cases. In Special Civil Application No.343 of 1999 there is an affidavit in reply dated 5.8.99 under

the signatures of Mr. Manoj Agrawal, Collector, Sabarkantha, Himatnagar and affidavit in reply dated 5.10.2000 under the signatures of Mr.

P.L.Zala, Under Secretary to Government of Gujarat, Food Civil Supplies & Consumer Affairs Department.

38. On behalf of the petitioners it was argued by Mr.J.S.Yadav that the decision in question not to renew the licences has been made operational

only in few places/Talukas/Districts and not through-out the State of Gujarat; that the impugned decision not to renew the licences as wholesalers is

based on the reason that under the earlier policy the consumers had to pay more price, but such reason according to the petitioners is not genuine

and in fact there is no increase in price and the kerosene has been sold at the fixed price to the customers; that the petitioners, who have been

granted licence under Order of 1981, are holders of licence as a wholesale dealer in kerosene as defined in the Act and the Statutory provisions of

the Order of 1981 do not provide that the licence holder has to be an agent of any recognized Oil Company to hold licence as a wholesale dealer

and that the conditions of the licence have to be regulated only in accordance with the Order of 1981. The matters in which there are orders that

wholesale licences be continued in certain Talukas/Districts where there are no agents of Oil Companies and in this regard it is pointed out that

even in cases of Special Civil Applications Nos.6112/97, 6113/97, 10134/98 and 9457/98 the petitioners are agents of recognized Oil

Companies and their licences are as wholesale dealers, but in these cases the reason for not renewing or cancelling the licences is that one person

cannot hold two licences and it has been submitted that it cannot be said to be a case of two licences and that there is no prohibition under Order

of 81 for holding two licences. It has been submitted that the State Government has taken different stands in different cases, which is

discriminatory. It was also submitted that the question of price/rate of kerosene can be controlled by appropriate directions and the policy

decision, which has been taken, is not conducive to the convenience of the customers. When the options were given in 1991 the petitioners

surrendered one of the two licences and retained the licences as wholesalers by surrendering the licences as retailers and subsequently the same

have been refused to be renewed and such a decision by the Government is wholly arbitrary; that there is no condition in the Statutory Order that

for claiming the licence one has to be an Agent of the Oil Company; that the petitioners have been dealing in the business of kerosene for last 20 to

35 years and they cannot be abruptly denied the renewal of the licence and denial of the renewal of the licence is wholly arbitrary. It is submitted

that the average wholesaler is earning Rs.15000/-- every year and that the decision of the Government is violative of the fundamental rights of the

petitioners and the same is in violation of Article 19(1)(g) of the Constitution of India. It has been argued that the sale of kerosene from agent to

retailer is not possible in remote villages and this policy decision will have an adverse consequence in monsoon season when tanker do not reach

on time.

39. On behalf of the petitioners the decisions in the cases of 1997 (2) GLH 298 (Rameshbhai V.Parikh v. Sr.Superintendent of Post Office,

Mehsana) and Raj Restaurant and Another Vs. Municipal Corporation of Delhi, were cited and relied upon.

40. Ms. Harsha Devani, learned A.G.P. has submitted with reference to the Circular dated 30.7.1988, which was an executive circular

consolidating all circulars and providing that in case of the licences held for the period prior to December 1985, even if they are not agents of the

Companies, they are to be continued. She has then submitted that the options were given in 1990 to retain either of the two licences and after the Judgment dated 26.4.94 the notices were given and after affording hearing the orders have been passed. On 3.4.95 when the superfluous arrangement of wholesalers was decided to be removed in phased manner, this order of 3.4.95 was suspended on 4.1.96 and, therefore, in view of this suspension the earlier system was continued. Later on when the impugned circulars were issued on 6.1.97, the licences as wholesalers were to be given only to the agents of the Companies and no wholesaler licence otherwise than it was given to any party and, therefore, under the new policy decision, the licence as a wholesaler is to be given only to the agents of the Companies where the agents have been so appointed and in such cases where the agents have been appointed by the Companies the licence as a wholesaler was not to be given to other persons and renewal was also not to be granted. This Circular dated 6.1.97 was clarified on 29.8.97 and it was provided that the licences earlier granted shall continue till the period is over, but no renewal was to be granted for the period after the expiry of the period of renewal already granted. The Circular dated 22.1.99 takes care of the grievance which has been raised that those who had given up the licence as retailer now stand deprived of their licence as a wholesaler.

41. I have considered the submissions, as have been made, on behalf of both the sides. It has to be agreed on all hands that kerosene as a petroleum product is a controlled essential commodity under Essential Commodities Act, 1955. The supply and distribution of kerosene is a part of public distribution system regulated by Statutory Orders i.e. Gujarat Essential Articles (Licensing Control and Stock Declaration) Order, 1981 issued under Sec.3 of the Essential Commodities Act, 1955 by the State Govt. with the prior concurrence of Central Govt.

42. This Control Order of 1981 provides for the maintenance of supplies of certain essential commodities including the Kerosene as a petroleum product included at Item No.2(a) of Schedule II to this Order of 1981 which has been issued to secure the equitable distribution and availability of the essential commodities at fair prices. Section 24 of this Order gives power to the State Government to issue directions to dealer or producer for

various purposes mentioned thereunder including the delivery or distribution of any essential article. The Food and Civil Supplies Department of the Govt. of Gujarat had issued a circular on 30th July 1988 consolidating the earlier circulars. According to this circular dated 30th July 1988, the licences held for the period prior to December 1985 were to be continued whether such licence holders were the holders of the licence of the Companies or not, otherwise the agents who have been appointed by the Oil Companies were to be given the licence of wholesalers in the districts and no person other than the agent/dealer appointed by the Oil Companies was to be given the new licence as a wholesaler for the supply of Kerosene. Thereafter in the year 1990, a circular was issued on 4th October 1990 by the Food and Civil Supplies Department of the Govt. of Gujarat in the matter of wholesale and retail licences for supply of Kerosene, according to which, the licence holders who applied for renewal were to be given option as to whether they wanted to retain the licence of wholesale or retail and only one of the two licences, i.e. either as a wholesaler or a retailer was to be renewed and one of the two licences held by any person was to be cancelled and no person was to be given the licence for both the purposes, i.e. as a wholesaler or a retailer. It appears that as a result of the action taken on that basis, the dealers who felt aggrieved filed Special Civil Application No.2 of 1994 which was decided by this Court and on that basis certain other Special Civil Application No.1205 of 1994 and others were also decided and the action taken by the State authorities restraining the petitioners from doing the business as wholesalers as well as retailers was set aside on 26th April 1994. It also appears that the Court, without expressing any final opinion as to whether the policy decision to be taken by the State Government or not as to whether one of the licences either as the retailer or wholesaler can be cancelled or not, the Court found that depriving the petitioners from doing the business at least upto the period for which the licence had been granted could be passed without complying with the principles of natural justice and the petitions were allowed directing the respondents to permit the petitioners to do the business as wholesalers as well as retailers upto the period for which the licence had been granted and/or renewed or operative. It was further ordered that it was for the respondent authorities to pass appropriate order in accordance with law after the licence period was over and

even during the licence period it was left open for the authorities to pass appropriate order after following the principles of natural justice and fair

play. After the aforesaid decision dated 26th April 1994, the Food and Civil Supplies Department of the Govt. of Gujarat issued a letter dated

26th Sept.1994 to all Collectors, District Supply Officers and Controller of Food and Civil Supplies, Ahmedabad, to take action only in

accordance with the decision as aforesaid.

43. On 3.4.1995, the Addl. Chief Secretary of Food and Civil Supplies Department, sent a letter to all the Collectors and the Controller of Food

and Civil Supplies Department, Ahmedabad in the matter of wholesale licence dealers in Kerosene. It appears from the contents of this letter that

the continuance of the wholesale dealers in between the Company agents and the retailers was found to be unnecessary and unsatisfactory because

at times, these wholesale dealers may create operational difficulties. It was found that it will be proper if the Government Oil Companies appoint

sufficient number of agents in every Taluka so that the retailers can take Kerosene directly from them. Thus, the three tier system was sought to be

abolished by obliterating the requirement of wholesalers between the Oil Companies and the retailers. The Government thus took a policy decision

to phase out the superfluous wholesale dealership and decided that where the retailers are in a position to lift Kerosene directly from the agents of

the Oil Companies, the wholesalers may be phased out straightway by not renewing their licence whenever it expires or earlier if there is a breach

of condition of licence and in other cases where the retailers are not in a position to lift Kerosene from the agents, phasing out all the wholesalers

will have to wait until the Oil Companies appoint additional agents for which the matter was to be taken up with the Oil Companies. The situation in

the districts was thus to be reviewed accordingly. However, the operation of this letter dated 3rd April 1995 was suspended by a letter dated 4th

January 1996 sent to all the Collectors and the Controller of Food and Civil Supplies Department, Ahmedabad by the Food and Civil Supplies

Department of the Govt. of Gujarat. In view of this letter dated 4th January 1996, the earlier system continued. Thereafter, a letter was sent on 6th

January 1997 by the Food and Civil Supplies Department of the Govt. of Gujarat to all the Collectors etc. that the licences as wholesalers were to

be given only to the agents of the Companies and no licence as wholesaler was to be given to any party or person other than the agents and no

renewal was to be granted. This letter dated 6th January 1997 virtually undone the effect of the letter dated 4.1.1996 and restored the letter dated

3rd April 1995. The said letter dated 6.1.1997 was further clarified on 29th August 1997 to the effect that the licence earlier granted was

continued till the period is over but no renewal shall be granted for any period after the expiry of the period for which the licence/renewal had

already been granted.

44. This Court therefore finds in the context of the letters referred to hereinabove that the licences which had already been granted including that of

renewal have not been disturbed till the date the same had been granted. The policy decision is that no fresh licence or renewal is to be granted as

a wholesaler in cases where the Oil Companies had appointed their agents. The wholesalers were sought to be removed in a phased manner from

the three tier system of the distribution of Kerosene and henceforth the retailers could directly obtain Kerosene from the dealers/agents appointed

by the Oil Companies and the availability of Kerosene at a fair and reasonable price was made easier by removing the superfluous wholesalers.

Such a decision or action taken on that basis leading to the refusal of the renewal of the licences after expiry of the period for which the same had

been granted or the refusal to grant any new licence as wholesaler cannot be said to be illegal or unreasonable in any manner and in such cases,

there is no question of violation of Article 19(1)(g) of the Constitution of India.

45. Whereas the case of the respondents is that after 26th April 1994, the decision as was rendered by this Court as mentioned above and the

issue of the letter dated 26th Sept.1994, no adverse order has been passed without giving notice and affording a reasonable opportunity, the cases

of Rameshbhai V. Parikh (supra) and Raj Restaurant (supra) as mentioned in para 39 hereinabove are of no relevance.

46. Primarily it is for the Government to decide as to what should be the mode of distribution and that all the items should be allowed to be sold

only through licences. So far as the common grievance, as has been raised in all these petitions with regard to the refusal of the renewal of the

licences already granted is concerned, it may be straightaway observed that in

the first instance and primarily the renewal of any licence cannot be claimed as a matter of right. Granting of the renewal of any licence for any controlled commodity under the public distribution system has to depend upon the decisions, which are taken by the Government and in case the Government has now taken a policy decision that the distribution system is to be made less complicated and for that purpose if a decision has been taken in the interest of the public and to regulate and control the price and when the decision is taken that the three tire system in such cases should be abolished because Oil Companies are the basic suppliers and if the Oil Companies have appointed their own agents, the wholesale licence is to be given to the agents or dealers of the Oil Companies as per the policy decision. It cannot be said that such policy decision is violative of Article 19(1)(g) of the Constitution of India. After all such Oil Companies being the basic suppliers, if they appoint their agents, those agents do work as suppliers as wholesalers and if the State, which is authorised to deal with the question of distribution, takes a decision in its own wisdom, such policy decision is not open to judicial review until and unless there is violation of any fundamental right. Before this court the common grievance, as has been raised, is against the refusal to renew the licence beyond the period for which it had been granted. At the time when the question of renewal came up, a change was introduced in the policy for the purpose of giving licences so as to replace the wholesalers by the authorised agents/dealers appointed by the Oil Companies and therefore renewals were not granted. In the opinion of this Court, no exception can be taken to such course of action. Even the argument with regard to the requirement of giving opportunity is not available in such cases when a policy decision is sought to be executed and the renewal is refused after the period for which the licence was granted is already over.

47. In case of Madhya Pradesh Ration Vikreta Sangh Society and Others Vs. State of Madhya Pradesh and Another, , while considering the question of preference given to the consumers" cooperative societies under the M.P. Foodstuffs (Distribution) Control Order, 1960 (under Sec.3 of the Essential Commodities Act, 1955) and Clause 2(a) of the scheme of distribution of foodstuffs through fairprice shops run by the Government, the Supreme Court held that introducing a new scheme for running

of Government fairprice shops by agents to be appointed under the Government scheme giving preference to cooperative societies, in replacement of the earlier scheme of running such fairprice shops through retail dealers appointed under Clause 3 of the Order was not violative of Articles 14 and 19(1)(g) of the Constitution of India.

48. In the case of *Sarkari Sasta Anaj Vikreta Sangh Tahsil Bemetra and Others Vs. State of Madhya Pradesh and Others*, , the Supreme Court

considered the amendment of M.P.Foodstuffs (Distribution) Control Order, 1960, vide order dated 30th Oct.1980 and held that the amendment

was valid. It was argued before the Supreme Court that this amendment had the effect of doing away appointed retailers and the same was being

done without notice to them and there was violation of principles of natural justice. The Supreme Court has held that the State Government has

undoubted competence to make a scheme for setting up fairprice shops and to set up fair price shops in pursuance thereof in exercise of its

executive power under Article 162 of the Constitution. The executive power of the State Government under Article 162 of the Constitution is co-

extensive with the legislative power of the State Legislature and Entry 33(b) of List III (Concurrent List) is ""trade and commerce in, and the

production, supply and distribution of foodstuffs, including edible oil-seeds and oils"". The Government, therefore, has undoubted right to make a

scheme for the distribution of foodstuffs without being vested with any special authority under any order made under the Essential Commodities

Act.

49. It may also be made clear that no one has a fundamental right for entitlement of the quota in respect of controlled and essential commodities.

Reasonable restrictions can always be applied and there is no question of violation of any right under Article 19(1)(g) of the Constitution of India in

such cases as laid down by the Supreme Court in the case of *P.P. Enterprises and Others Vs. Union of India (UOI) and Others*, - Paras 8 and 10.

The argument of legitimate expectation is not binding for all times to come as laid down in the case of *P.T.R. Exports (Madras) Pvt. Ltd. and*

others Vs. Union of India and others, . Why the policy decision has been taken by Government has also been fully explained in the affidavits, as

has been filed. In view of the pleadings of the parties and the submissions, which

have been made before this Court, this Court does not find that there is violation of any of the rights of the parties. Basically it is in the wake of the change of the policy of the Government on 3.4.95 requiring such dealers to obtain dealership directly from the concerned Companies to supply the Oil and it is open for the petitioners to obtain the dealership from the concerned Oil Companies for the purpose. The mere change in such policy decision does not give right to any cause of action or an enforceable right so as to challenge the same before the Court.

50. The scope of interference by the Courts in the matters when an action is taken under a policy decision of the Government is very limited as under:

(i) Unless the policy decision is arbitrary, capricious or unreasonable and unless it can be demonstrated and illustrated that such policy decision is likely to defeat the very purpose for which the decision has been taken or unless the policy decision is demonstrable to be capricious or arbitrary

and not informed by any reason whatsoever or it suffers from the vice of discrimination or infringes any statute or provisions of the Constitution,

there is no question of interference with the action taken in pursuance of such policy.

(ii) In such cases, the grievance of infringement of fundamental right under Article 19(1)(g) must have a direct impact on the restriction, on the

freedom to carry on trade and not ancillary or incidental of such freedom to trade arising out of any Governmental action.

(iii) The policy decision is in the domain of the executive authority of the State and the Courts are not supposed to embark upon the wisdom of the

executive authority in taking such policy decision as long as it does not offend any provision of the statute or Constitution of India.

51. The policy decision on the basis of which the action has been taken in refusing the renewal of the licence in the instant cases, is not found to be

arbitrary or offending Article 14 or 19(1)(g) of the Constitution of India and the wisdom of the policy being not relevant, this Court finds that there

is no scope for interference with the impugned action.

52. The question of cancellation of the licences is different than the question of renewal. It is found from the facts that in certain cases in which the

licence was cancelled, appeals and revisions were also preferred. In some cases,

the same have been rejected and in some cases, it is said to be pending and this Court does not find any reason to interfere with such orders. The cancellation orders have been passed after giving show cause notice and this Court does not find any illegality in the orders as have been passed. However, it is made clear that in case any appeal/revision is pending in any case as filed by any of these petitioners, it will be open for the concerned authorities to pass appropriate orders in accordance with law on merits independent of any observations made by this Court in this order.

53. So far as the licence holders, who had surrendered one of the two licence held by them, are concerned, it has been made clear by the circular dated 22.1.99 that those who had surrendered one of the two licences, can revive and get their licence as a retailer and the same is to be restored on their making applications. This circular dt.22.1.1999 is enough to take care of the grievance raised by those who had surrendered their licences as retailers.

54. This Court does not find any merit in any of these 34 Special Civil Applications. All these 34 Special Civil Applications are hereby rejected and the Rule issued in each of these 34 petitions is hereby discharged. The interim orders passed in all these petitions stand automatically vacated.

No order as to costs.

55. Mr.N.K.Pahwa, Mr.J.S. Yadav and Mr. H.R.Singh for Mr.K.B.Pujara present before the Court at the time of dictation of order have requested that the interim orders be continued for some time so as to enable them to approach the Higher Court. This Court does not find any justification to allow the interim orders to continue any more when the main petitions themselves have been rejected on merits. The request is hereby declined.