

(2000) 01 KAR CK 0023

In the Karnataka High Court

Case No : Writ Petition No's. 29592 to 29612, 29658 to 29683, 32576 to 32581, 34141, 34281 to 32485, 37144 to 37151, 37290 to 37357, 39035 to 39081, 40952, 41453 to 41469, 41470 to 41514, 42253 to 42258, 42278, 42784 to 42786, 42778 to 42780 and 44193 of 1999

Karabasappa and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 17-01-2000

Acts Referred:

Essential Commodities Act, 1955 — Section 5
Karnataka Essential Commodities (Public Distribution System) Control Order, 1992 — Section 3 (2)

Citation : (2001) ILR (Kar) 380 : (2001) 1 KarLJ 282 : (2001) 4 KCCR 379 SN

Hon'ble Judges : R.V. Raveendran, J

Bench : Single Bench

Advocate : Sri A.Y.N. Gupta, Sri S.R. Shinde, Sri H. Neelakanta Rao, Sri M.V. Hiremath, Sri. S.P. Kulkarni, Sri Mohan Shanthanagoudar, Sri Basava Prabhu S. Patil, Sri M. Papanna, Sri Ramesh S. Biradar, Sri B.R. Sathenahalli, for the Appellant; Smt. Shobha Patil, Government Pleader, for the Respondent

Judgement

1. The petitioners in these petitions are all holders of Hawkers' licences under the Karnataka Essential Commodities Licensing Order, 1986 (for short, "licencing order"). A few of them have also obtained authorisation under the Karnataka Essential Commodities (Public Distribution System) Control Order, 1992 ("PDS Control Order" for short).

2. Petitioners are allotted kerosene for distribution under the public distribution system to ration card holders. Petitioners claim that each Hawker who possesses a push-cart, is allotted 150 to 300 ration cards for distribution of kerosene. It is stated that each card holder is entitled to 10 litres of kerosene per month, if he does not have gas connection (and two litres per month if he has gas connection). Having regard to the number of ration cards allotted to each Hawker, and the quantity of kerosene to which each ration card holder is entitled,

each Hawker gets about 2,000 to 3,000 litres of kerosene for distribution to the ration card holders. It is stated that they are being paid a commission of 25 paise per litre of kerosene. Therefore, the maximum income a push-cart kerosene Hawker gets is only Rs. 500.00 to 625.00 per month. Most of the push-cart Hawkers eke out a living out of the said meagre income or by working part-time elsewhere to make two ends to meet.

3. The State Government, in exercise of its powers conferred u/s 5 of the Essential Commodities Act, 1955 ("Act" for short), has made Karnataka Essential Commodities (Public Distribution System) Control Order, 1992 to regulate the distribution of essential commodities (rice, wheat, wheat products, sugar, edible oil and kerosene). Clause 3 of the said order provides for grant of authorisation by the authorised authority; and a person obtaining an authorisation to run a fair price depot is entitled to obtain essential commodities issued under the public distribution system and distribute them to the ration card holders, residing in the area specified therein. Sub-clause (2) of Clause 3 of the PDS Control Order provides that authorisation holder shall run the fair price depot, in accordance with the terms and conditions contained in the authorisation and no other person shall sell any essential commodity supplied by the Government meant for distribution under public distribution system. There is no provision under the PDS Control Order, for grant of Hawkers' licences for distribution of kerosene or any essential commodities under the public distribution system.

4. When the PDS Control Order was made in 1992, it provides for distribution of foodgrains to ration card holders through fair price depots at fair prices fixed by the Government. Kerosene was not a commodity to be distributed through fair price depots under the Public Distribution System Control Order, 1992. Kerosene continued to be distributed through retail dealers and Hawkers, who were licensees under the Licensing Order. The PDS Control Order was amended by the Karnataka Essential Commodities (Public Distribution System) (Amendment) Control Order, 1996, as per Notification No. FCS 589 DRA 96, dated 30-12-1996 (Gazetted on 27-3-1997) by which the definition of "public distribution system" under Clause 2(1) was amended to mean a scheme of distribution system through which the State Government distributes essential commodities specified in the Schedule appended to the order, to the ration card holders through the fair price depots at a fair price fixed by the Government. By the said amendment, a Schedule was also added, listing the essential commodities to be distributed through the public distribution system. The essential commodities listed are rice, wheat, wheat products, sugar, edible oil and kerosene. Thus, kerosene was brought under the PDS Control Order with effect from 27-3-1997.

5. The kerosene Hawkers, who were holding licences under the Licensing Order and who were being permitted to distribute kerosene to ration card holders, before the amendment to PDS Control Order, had to obtain authorisation under the PDS Control Order, if they wanted to continue distribution of kerosene to card holders. However, pending transition, the kerosene Hawkers were permitted to

continue distribution on the basis of Hawkers' licences issued under the Licensing Order, purely as an ad hoc and temporary measure. It is stated that a few of the Hawker licence-holders, however, obtained authorisation also, but their number is not many and the remaining majority continue to operate only with the Hawkers' licences obtained under the Licensing Order.

6. The PDS Control Order specifically contemplates that each authorisation holder distributing essential commodities in retail to ration card holders, should run his fair price depot in a suitable premises with sufficient space to store the essential commodities. Therefore, the State Government issued the impugned order dated 31-5-1999, directing discontinuation of distribution of kerosene under the public distribution system through Hawkers, operating with hand-carts and directed that henceforth kerosene shall be distributed under the public distribution system only through the regular/permanent shops. The said order also provides for grant of sufficient time to the Hawkers to become authorisation holders by obtaining suitable shops as required under Clause 5(b) of the PDS Control Order. The order also gave six months' time to the kerosene Hawkers to shift from push-carts to regular shops. It further directed all Hawkers who distributed kerosene through push-carts and who do not shift over to the regular shops will not be permitted to sell kerosene under the public distribution system, but can obtain licence to sell kerosene under the open market system. The preamble to the said order makes it clear that the said order is passed in pursuance of the directions of this Court in *Mysore Nagara and Zilla Consumer Co-operative Societies' Fair Price Shops and Kerosene Hawkers' Sangha (Regd.), Mysore v State of Karnataka and Others*, wherein this Court held that the PDS Control Order does not contemplate kerosene being sold to card holders through hawkers but only through fair price depots; and Hawkers who have been licenced under the Licensing Order for sale of kerosene cannot distribute kerosene under the public distribution system to ration card holders, but can only sell kerosene under the parallel open market system. Consequential directions have also been issued to stop distribution of kerosene to card holders under the public distribution system through Hawkers from 1-1-2000.

7. Feeling aggrieved, petitioners have filed these petitions for quashing the Government Order dated 31-5-1999 and the consequential orders, directing stoppage of distribution of kerosene through Hawkers. Petitioners contend that as the Licensing Order contemplates grant of licence to Hawkers, it should be inferred that the distribution of essential commodities by way of sale through Hawkers is a recognised form of distribution of essential commodities and the State, by an executive order, cannot do away with the sale/distribution of kerosene under the public distribution system through the Hawkers.

8. Reliance is placed on the decisions of this Court in *Aland Kerosene Hawkers' Association (Regd.) and Others v State of Karnataka and Another* and in *Karabasappa v State of Karnataka*.

8.1 In the *Aland's* case, *supra*, this Court held that having granted Hawkers'

licence for a calendar year, the authorities under the Licensing Order, can regulate the manner of sale as provided under Clause 2 and Clause 9 of the licences, by issuing directions which are regulatory in nature; but such powers of regulation cannot be used to require Hawkers, who move from place to place to sell and supply kerosene to card holders, to take a shop near the fair price depot and carry on their business in a fixed place and therefore the petitioners therein who had been granted Hawkers' licences to be in force till 31-12-1996, are entitled to continue as Hawkers till the expiry of the licences granted to them and they could not be required to take shops near fair price depots for distributing kerosene under Hawkers' licence. In other words, the said decision merely provides that a licence under the Licensing Order once granted cannot be modified by changing the nature of licence from that of an Hawker to that of a retail dealer, during the validity period of licence. The said decision did not deal with the requirement of an authorisation under the PDS Control Order, for distribution of essential commodities to card holders. In Karabasappa's case, this Court reiterated that once the Hawkers' licences are issued, to distribute kerosene by moving from one place to another, they cannot be required to do the business in a particular fixed place by opening a shop, near the fair price depot, which distributes other essential commodities.

8.2 The said two decisions reiterate the decision of this Court in Karnataka Kerosene Hawkers' Association v State of Karnataka, wherein this Court held that if the Hawker is required to sell kerosene in a fixed place, the essential characteristic of a Hawker's licence (i.e., moving from place to place to sell goods) will be wiped out and any requirement that a Hawker should sell kerosene from a fixed place would convert a "Hawker's licence" into a "retail dealer's licence" thereby deleting the class of licensees known as "Hawkers" licence" from the Licensing Order, and such a course would be opposed to the scheme of the Licensing Order.

8.3 Petitioners next relied on the decision of this Court in Karnataka Kerosene Retail Dealers' Federation, Bangalore v State of Karnataka and Others, wherein this Court recognised a three tier system of distribution of essential commodities under the Licensing Order i.e., wholesale dealers, retail dealers and Hawkers.

8.4 These authorities have no relevance to decide the issue arising in these petitions, that is whether a Hawker holding a licence under the Licensing Order, can distribute kerosene under the Public Distribution Scheme under the PDS Control Order (as amended by Notification dated 30-12-1996, Gazetted on 27-3-1997).

9. On the other hand, there are three decisions, which directly consider the question that arises in this case. They are Vyavasaya Seva Sahakara Nema Co-operative Society, Shiralakoppa, Shimoga District and Another v State of Karnataka and Others , Mysore Nagara and Zilla Consumer Co-operative Societies case, supra and Basavantha Naik v State of Karnataka.

9.1 In VSSN Society's case, supra, this Court held that an authorisation to distribute kerosene under the public distribution system can only be granted by an authorised Authority under the PDS Control Order and obtaining of a licence under the Licensing Order will not entitle such licensee under the Licensing Order to distribute essential commodities (including kerosene) under the public distribution system. This Court, after considering the provisions of PDS Control Order and the Kerosene (Restriction on Use and Fixation of Price) Order, 1966, held that kerosene is meant to be distributed or sold to ration card holders at a fixed price only through the persons holding authorisation under the provisions of the PDS Control Order.

9.2 In Mysore Nagara and Zilla Consumer Co-operative Societies" case, supra, this Court referred to the provisions of Kerosene (Restriction on Use and Fixation of Price) Order, 1993, wherein a clear distinction has been made between public distribution system and the parallel marketing system. The parallel marketing system is defined under Clause 2(i) of the said order as a system other than the public distribution system, under which a person imports, transports, packs, distributes or sells kerosene under his own arrangement. Clause 2(j) of the said order describes the "public distribution system", as meaning a system of distribution, marketing or selling of kerosene at declared price through a distribution system approved by the Central or State Government. This Court held that a holder of licence under the Licensing Order to sell the kerosene is only entitled to sell the kerosene under the parallel marketing system and not entitled to supply kerosene under the public distribution system.

9.3 In Basavantha Naik's case, supra, this Court considered the question whether the authorisation holder under the PDS Central Order should also obtain a licence under the Licensing Order. This Court held that a person holding an authorisation to run a fair price shop for distribution of essential commodities under the public distribution system under PDS Control Order and who does not deal generally in essential commodities as a retail dealer is not required to take a licence under the Licensing Order. This Court observed thus:

"The Licencing Order, as well as the PDS Control Order, are made by the State Government in exercise of the powers delegated to it under the provisions of the Essential Commodities Act, 1955. The two orders regulate two different spheres of activity. The first regulates dealing in Essential Commodities other than essential commodities distributed under the Public Distribution System. The second regulates distribution of essential commodities under the public distribution system. A conjoint regarding of the Licensing Order and PDS Control Order, therefore make it clear:

(a) that persons who deal in essential commodities (other than the essential commodities which are issued under the public distribution system for distribution to ration card holders) require a licence under the Essential Commodities Licensing Order; (b) persons who run fair price depots exclusively distributing essential commodities issued under the public distribution system

from the State, to ration card holders require only an authorisation under the PDS Control Order and not a licence under the Licensing Order".

10. The aforesaid three decisions make it clear that holding of a licence under the Licensing Order will not enable the holder of such licence to distribute essential commodities to ration card holders under the PDS Control Order. A Hawker's licence is contemplated only under the Licensing Order and not under the PDS Control Order. Under the PDS Control Order, a fair price depot has to be run by a person holding the authorisation issued by the authorised authority. Under the PDS Control Order, an authorisation to run a fair price depot can be issued only to a person who possesses a suitable business premises. As PDS Control Order does not contemplate sale of kerosene under the public distribution system through Hawkers in push-carts, the order dated 31-5-1999 discontinuing the system of supply of kerosene to Ration Card Holders under the public distribution system through Hawkers, does not suffer from any infirmity. In fact, it merely gives effect to the provision of the PDS Control Order and the aforesaid decisions of this Court and is not therefore open to challenge. The challenge to consequential orders directing stoppage of distribution of kerosene to Ration Card Holder under public distribution system, through Hawkers, from 1-1-2000 is also not open to challenge. The petitions, therefore, will have to fail, insofar as persons who are holding Hawkers' licences only.

11. However, at this stage, one aspect requires to be noticed. It is stated that a Hawker is allotted hardly 150 to 200 ration cards, for distribution of kerosene and each ration card holder is not entitled to more than 10 litres of kerosene per month (it is as little as two litres if the ration card holder is having a gas connection). In the circumstances, a Hawker distributes about 2,000 to 3,000 litres of kerosene per month and would normally get an income of hardly Rs. 500.00 to 625.00, as his commission is only 25 paise per litre. I am told that there are more than 20,000 Hawkers in the State. It is unfair to expect or insist that these Hawkers who belong to the weaker section of the society and who eke out a livelihood with such a meagre income of Rs. 500.00 to Rs. 625.00 per month to have a regular shop, either on ownership or rental basis. Judicial notice can be taken of the fact that having a regular shop either on rent or on ownership basis, involves a considerable investment or expenditure. It is needless to say that persons who have financial capacity to own or rent a shop will not choose to be street Hawkers. It is only the poor, who cannot afford to have a shop, who take Hawker's licences. To expect such persons from weaker sections who have become Hawkers, to take a shop is unrealistic, bordering on being an unreasonable requirement.

12. Before making any change in the existing system, the Government should have considered the consequences of such a requirement. It is no doubt true that the impugned Government Order dated 31-5-1999 has been necessitated on account of certain irregularities noticed in sale of kerosene by Hawkers, and the order of this Court in Mysore Nagara and Zilla Consumer Co-operative Societies

case, *supra*. But, this Court was merely explaining the legal position with reference to the existing provisions of the Licensing Order and the PDS Control Order. The orders of this Court do not come in the way of formation of any modified Scheme or amendment to the relevant provisions of the PDS Control Order. It would, therefore, be just and appropriate if the State Government considers the plight of more than 20,000 Hawkers all over the State and formulates an appropriate scheme, which either increases their commission (income) enabling them to take shops or provides them some kind of permanent shelters (as in the case of milk booths) so that the Hawkers can distribute kerosene from such shops. The petitioners submit that if they are provided some place at reasonable rent by the Government or if their commission is increased, or if the number of cards allotted for supply is increased, they will not have any objection for carrying the distribution of kerosene from such shops by obtaining authorisation under the PDS Control Order. It is financial incapacity which makes it difficult, if not impossible, for them to have shops. The Government may, therefore, consider formulating a suitable policy in the matter before the end of this year (31-12-2000). Having regard to the fact that the licences under the Licensing Order are for a period of a calendar year and the calendar year 2000 has already commenced, it would be appropriate if the licences of petitioners are renewed and the status quo is maintained till the end of the year or till such shorter period, by which time the Government is able to formulate a more realistic and reasonable policy. It is made clear that what is stated in this para are not directions, but suggestions to ensure that a large section of persons belonging to weaker section are not left without a means of livelihood, abruptly.

13. The period of authorisation now granted under the PDS Control Order is three years, in contrast with the period of licence which is one year, under the Licensing Order. It is needless to say that wherever the petitioners have already obtained authorisations under the PDS Control Order, distribution of kerosene to card holders through them cannot be stopped. In fact neither the order dated 31-5-1999 nor any consequential order applies to petitioners who have already obtained authorisations under PDS Control Order. Even if authorisations are wrongly issued to persons without shops, supply to them cannot be stopped unless action is taken in accordance with law, for cancelling of such authorisations. Be that as it may.

14. In view of the above, these petitions are disposed of subject to observations in paras 11 and 12 in regard to petitioners having Hawkers' licences under the Licensing Order, and subject to the observations in para 13 in regard to petitioners having authorisations under the PDS Control Order.