

(2010) 03 J&K CK 0031

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 720 Of 2007, CMP No. 1056 Of 2007

Kerosene Oil Retails Association

APPELLANT

Vs

State of J&K & Ors.

RESPONDENT

Date of Decision : 04-03-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 19
Essential Commodities Act, 1955 — Section 3
Kerosene Oil (Licensing) Order, 1974 — Rule 13, 7

Citation : (2010) 2 SriLJ 879

Hon'ble Judges : Muzaffar Hussain Attar, J

Bench : Single Bench

Advocate : B.R.Chandan, Sumit Singh , Sunil Sethi, Advocates appearing for the Parties

Judgement

1. Government Order No. 27CAPD of 2007 dated 13.02.2007, has the effect of cancelling Kerosene Oil License of the Members of the petitionerAssociation.

2. PetitionerAssociation has called the said Government Order in question inter alia on the grounds that the it suffers from lack of application of

mind, in as much as respondents have not individually considered the cases of the members of petitionerAssociation and have not afforded an

opportunity of hearing to each of the license holders. It is pleaded in the writ petition that the allegations on which the impugned order has been

passed, are not supported by any material or evidence, neither any survey on scientific lines has been conducted to sustain such factual findings. It

is also pleaded that respondents while passing the impugned order have clubbed unequal's, which renders the impugned order arbitrary and

discriminatory violating the constitutional guarantees available to the petitioner

under Articles 14 and 19 of the Constitution of India. It is further pleaded that grounds on which impugned order has been passed are non-existent. It is also pleaded that none of the terms and conditions of the licence have been violated by any of the member of the petitioner Association.

3. On notice, respondents appeared. Counter affidavit is filed.

4. Counter affidavit is more or less based on the averments contained in the order impugned in the writ petition.

Heard learned counsel for parties. Considered the matter.

5. Learned counsel for petitioner Association while referring to the grounds mentioned in the impugned order stated that before coming to any conclusion, it was duty cast on the respondents to put the petitioners on notice. Learned counsel further submitted that respondents having failed to

comply with the minimum requirement of principles of natural justice, thus, impugned order stands vitiated. Learned counsel further submitted that

the members of the petitioner Association are valid licence holders, which licences have been issued to them in accordance with the mandate of

rules notified vide SRO No. 79 of 1974 dated 25.02.1974 which rules are called J&K Kerosene Oil (Licensing) Order, 1974 (for short "order of

1974"). Learned counsel also made a pointed reference to proviso to Rule 7 of the order of 1974 and submitted that in view of the rules made by

the respondents themselves, before passing the impugned order, they were duty bound to give a reasonable opportunity to the members of the

petitioner association to state their case. Learned counsel also submitted that the impugned order suffers from lack of application of mind, in as

much as, the respondents have not identified as to on which ground the license of the individual license holders has been cancelled. Learned

counsel referred to and relied upon the judgment of the Hon'ble Supreme Court in case titled "Onkar Lal Bajaj and ors. (Appellants) vs. Union of

India and anr. (Respondents)" reported in (2003) 2 SC 673. In the said case, the allotments of the retail outlets distributorship and dealership of

petroleum products were cancelled, on the basis of newspapers report. The Hon'ble Supreme Court held that the action of the authority therein to

be arbitrary and discriminatory and struck down the action of the authorities concerned.

6. Learned counsel for respondents submitted that some of the Kerosene Oil

license holders are not functioning properly and were selling the Kerosene oil allotted to them on the basis of license issued to them in black market. Learned counsel further submitted that Division Bench of this Court in one of the cases, on the allegations that the Kerosene Oil is being mixed with Petrol and Diesel, issued certain directions to the respondentState which persuaded the respondents to constitute a committee to look into the matter. Learned counsel also referred to AnnexureA of the counter affidavit to state that a general public notice was issued in daily newspaper for the information of the public in general and the concerned in particular to convey any relevant information with regard to the existence/genuineness and working of Kerosene Oil Depots. The said public notice is reproduced as under:

Government of Jammu and
Kashmir
Consumer Affairs and Public
Distribution Department
Civil Secretariat.

I, J. L. Bhat (KAS), Chairman of the Committee constituted vide Government Order No. 17CAPD of 2007 dated 25.01.2007 do hereby notify for the information of the general public that the Department of the CAPD, Jammu has initiated an enquiry about genuineness of Kerosene Oil dealers in Jammu City in view of various Complaints regarding black marketing, Hoarding/ Profiteering of K. Oil in order to streamline the distribution system of K. Oil in the city and facilitate the enquiry smoothly, the public in general and the concerned in particular are requested to convey any relevant information and with regard to the existence/ genuineness and working of the K. Oil Depots as per list appended as Annexure'A' to the undersigned within five days from the date of issuance of this notification during office hours.

No. CAPD/PSAS/204/06 Sd/(J. L. Bhagat)

Dated: 03/02/2007

Addl. Secretary to Government

CAPD Deptt/ Chairman

7. Learned counsel for respondents further submitted that in pursuance of the enquiry conducted, more than 700 Kerosene licenses were cancelled. He further submitted that department is catering to the requirements of the consumers. Learned counsel also submitted that a criminal case is pending investigation against the petitioners (herein) for the alleged black marketing of the Kerosene Oil. Learned counsel further submitted that as the members of the petitionerAssociation would sell Kerosene Oil in the black market, it was for these reasons that their licenses have been ordered to be cancelled. Learned counsel further submitted that members of the petitionerAssociation have violated the terms and conditions of the license.

8. There is no dispute about the fact that member of the petitionerAssociation were license holders which were issued by the competent authority in accordance with the Order of 1974.

9. The right to carry on trade business, occupation is a fundamental right guaranteed under Article 19(1)(g) of the Constitution of India as applicable to the State of J&K.

10. The State, however, has power to place reasonable restrictions on the exercise of such fundamental right in terms of clause 6 of Article 19 of the Constitution of India by making law.

11. The State has made law called Essential Commodities Act, 1955, to place reasonable restrictions on the exercise of fundamental rights guaranteed under Article 19 of the Constitution of India. In terms of Section 3 of the Essential Commodities Act 1955, Government vide SRO 79 of 1974 dated 25.02.1974 issued the order namely Jammu and Kashmir Kerosene Oil (Licensing) Order, 1974.

12. The order of 1974 contains the complete procedure for issuance of license for dealing in Kerosene Oil as also for suspending/cancelling said licenses. Rule 7 of the Order of 1974 provides that no stockiest, dealer or a retail dealer shall contravene any of the terms or conditions of the licence or the directions issued under clause 13 or any provision of this order. It further provides that if any stockiest, dealer or a retail dealer contravenes any of the said terms and conditions or any provision of this order, then without prejudice to any other action that may be taken against the licensee his licence may be cancelled or suspended by order in

writing by the licensing authority.

13. The proviso appended to the rule 7 of the order 1974 provides that no order shall be made under this clause unless a reasonable opportunity

of stating his case and of being heard against the proposed cancellation or suspension of the license is provided to the concerned. Rule 7 referred

to above, is reproduced as under:

7. Contravention of the terms and conditions of licence or Directions:

No stockiest, dealer or a retail dealer shall contravene any of the terms or conditions of the licence or the directions issued under clause 13 or any

provision of this Order, and if any stockiest, dealer or a retail dealer contravenes any of the said terms, conditions or any provision of this order,

then without prejudice to any other action that may be taken against the licensee his licence may be cancelled or suspended by order in writing by

the Licensing authority.

Provided that no order shall be made under this clause unless the stockiest, dealer or retail dealer, as the case may be, has been given a reasonable

opportunity of stating his case and of being heard against the proposed cancellation or suspension of the license.

14. In the present case, it is revealed by the impugned order that a committee was constituted to streamline and rationalize the procedure for

allotment of Kerosene Oil and its distribution in Jammu District within the municipal limits of Jammu. It is also alleged in the impugned order that

some of the Kerosene Oil Depots are only shown on papers. Interim report of the committee constituted intimated that 616 Kerosene Oil depots

are not functioning properly. It is on the basis of these reports that the licenses of the members of the petitioner Association have been ordered to

be cancelled.

15. The question that has come up for consideration of this Court and begs answer is as to whether without identifying the Kerosene Oil dealers

who according to respondents have violated the terms and conditions of the license and who were functioning only on papers and or/were not

functioning properly, could the impugned order be passed. The allegations contained in the impugned order are not only stigmatic, but penal in

nature, is as much as, in consequence thereof, the licenses of the member of the petitioner Association have been cancelled. The impugned order

does not anywhere show that any of the individual license holders has been put on notice informing him/them about the nature of allegations against

them. The impugned order on this short count, being violative of principle of natural justice, is rendered void ab initio and deserves to be quashed.

16. However, in order to further show that impugned order is unreasonable and arbitrary, it has to be mentioned that no effort has been made by

the respondents to consider the case of the members of the petitioner association individually. There could be allegations against some persons of

one nature and against some persons of a different nature and may be that there would not be any allegations against some of the members of the

petitioner Associations. Respondents have neither referred to specific allegations against any of the licence holders in the impugned order nor have

they stated that who was license holder, holding the license on paper alone and which of license holders were not functioning properly. The

impugned order is not only non descriptive but is vague as well. Nothing can be comprehended by a reasonable person from such an order.

17. The order on this count also is rendered arbitrary and violative of the guarantees as contained in Article 14 of the Constitution of India. The

order deserves to be quashed on one more count viz. the proviso appended to Rule 7 of the order of 1974 provided that before proposing action

for cancellation of the license, a reasonable opportunity of hearing has to be afforded. The impugned order is silent about the compliance of the

above said provision. Respondents, thus, have violated their own rules,

18. For the above stated reasons, this petition is allowed. By issuance of writ of Certiorari, impugned order, so far as it pertains to members of the

petitioner Association is quashed. Respondents are given liberty to initiate action against individual members of the petitioner Association and pass

appropriate orders in accordance with law after giving them reasonable opportunity of hearing.