
(2012) 02 CAL CK 0064
In the Calcutta High Court
Case No : Writ Petition No. 7942 (W) of 2002

M/s. Ajodhya Prasad Shaw and Others	APPELLANT
Vs	
The State of West Bengal and Others	RESPONDENT

Date of Decision : 14-02-2012

Acts Referred:

West Bengal Kerosene Control Order, 1968 — Section 10

Citation : (2012) 5 CHN 518

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Partha Sarathi Sengupta, Mr. Somenath Bose, Ms. Debjani Sengupta, Mr. Sukdeb Chatterjee and Mr. Uttam Chakraborty, for the Appellant; Subrata Talukdar, Ms. Sucharita Chatterjee for the State and Mr. Amit Kr. Nag Ms. S. Choudhury for the Respondent No. 8, for the Respondent

Final Decision : Dismissed

Judgement

Tapen Sen, J.—The Petitioner No. 1, M/s. Ajodhya Prasad Shaw is a partnership firm carrying on business as Agents for the supply of Kerosene Oil in the District of Howrah. The Petitioner Nos. 2 and 3 are partners of the said firm.

2. They pray for quashing the Order dated 11.4.2002 (Page 123 of the Writ Petition and as communicated to them by letter dated 19.4.2002 - Annexure-P/10) whereby and whereunder, the special Secretary, Department of Food & Supplies-cum-Appellate Authority under the Essential Commodities Act, while dealing with the Appeal of the Petitioners filed u/s 10 of the West Bengal Kerosene Control Order 1968 (hereinafter referred to as the 1968 Control Order), held that the charges framed by the investigating team were correct and therefore the Order of cancellation of the Licence passed by the Assistant Director of consumer goods, was justified. The Petitioners have also prayed for quashing the said Order dated 29.1.2002 passed by the Assistant Director, Consumer Goods whereby and whereunder and in exercise of powers conferred upon him under para-9 of the said 1968 Control Order and subsequent

amendments thereto, cancelled the Kerosene Oil Agents Licence No. AGT/ULU/1295 dated 13.5.1999 for violation of the provisions of Paras-9 and 12 of the said Control Order.

The Petitioners have further prayed for issuance of a Writ of Mandamus commanding upon the Respondents to allow them to carry on their business.

3. The Petitioners have stated that by reason of a Token issued by the Assistant Director of Consumer Goods, the Petitioners were authorized to carry on business as Agents for dealing in the sale of Kerosene Oil till 31st March, 2001. The validity of the Token was extended up to 31.12.2001 whereafter the Petitioners applied for renewal of the Licence.

4. On 1.1.2002, the Assistant Director of Consumer Goods, issued a suspension-cum-show-cause Notice wherein it was stated that from the Enquiry Report submitted by an investigating team, certain irregularities had been detected and from which, it was evident that the Charges were grave in nature and that the Petitioners indulged in malpractices. Consequently, they were charged of having violated the provisions of paras-9 and 12 of the West Bengal Kerosene Control Order 1968 and accordingly, by reason of the power conferred upon him under para-9 of the said 1968 Control Order, the Kerosene Agent Licence of the Petitioners was placed under suspension and the Petitioners were directed to file an explanation within 7 days. The said letter is Annexure-P/2 at page 25 of the Writ Petition.

5. It appears that thereafter on 7.1.2002, the Petitioners by Annexure-P/3, sent a letter in reply to the aforementioned suspension-cum-show-cause Notice wherein, without prejudice to their rights and contentions, they prayed for three weeks' time for filing a reply. In the said letter, they stated that no opportunity of hearing was given to them before passing the said Order of suspension and that the allegations were all incorrect. They also stated that the suspension-cum-show-cause Notice was issued on the basis of an Enquiry Report but no such Report had been supplied to them and therefore, they requested that a copy of the said Report be supplied to them within a fortnight so that an effective reply can be filed.

6. Thereafter on 14.1.2002, the Petitioners sent a letter to the Director of Consumer Goods, wherein, while referring to the suspension-cum-show-cause Notice, they stated that neither any Notice nor any opportunity of hearing was given before coming to the conclusion that the Petitioners had violated different provisions of the Control Order of 1968. They also complained that the copy of the Enquiry Report was not given and that they were waiting for a reply to their letter dated 7.1.2002 referred to above. They also stated that unless a copy of the Report was given, they were not in a position to file a comprehensive reply and therefore, they requested that the matter be adjourned. However, and in reply to the suspension-cum-show-cause Notice, the Petitioners filed their reply on or about 14.1.2002 before the Assistant Director of Consumer Goods denying

the charges leveled against them and prayed that the Order of suspension be vacated and they be allowed to resume their business of distribution of Kerosene Oil.

7. It was thereafter that the first impugned Order dated 29.1.2002 was passed by the Assistant Director of Consumer Goods cancelling the Licence of the Petitioners vide Annexure-P/6. Being aggrieved, the Petitioners filed an Appeal before the Director of Consumer Goods under the provisions of para-10 of the said Control Order of 1968 vide Annexure-P/7. A Supplementary Affidavit was also filed thereto and ultimately, they received the communication dated 19.4.2002 informing them with their Appeal had stood rejected by the Director of Consumer Goods on 11.4.2002. The said communication is Annexure-P/10 and the Order dated 11.4.2002 which was enclosed therein, has been placed on record at pages 123 to 126 of the Writ Petition.

8. An Affidavit-in-opposition has been filed on behalf of the Respondent Nos. 1 to 6 and it has been duly sworn by the Assistant Director-in-charge. From the said Affidavit-in-opposition, it will appear that a statement has been made that on or about 11.9.2001, an unsigned complaint was filed by one Ram Das of Bagnan, in the District of Howrah and it was addressed to the Assistant Director of Consumer Goods making allegations of serious malpractices committed by the Petitioners in the month of July, 2001 in connivance with the Sub-divisional Controller, Uluberia.

9. On receipt of the said complaint, the Director of Consumer Goods formed a high powered investigating team on 25.9.2001 and it was headed by the Deputy Director of Consumer Goods, Assistant Director and Chief Inspector (HQ). They were directed to investigate into the allegations made in the complaint.

The investigating team submitted their Report on 10.12.2001 disclosing various irregularities having been committed including tampering with the stock register and commission of other malpractices. It is stated that on consideration of the said Report, the Assistant Director issued the suspension-cum-show-cause Notice on 1.1.2002 and a reply thereto was filed by the Petitioner whereafter the impugned Orders were passed including the Order of the Appellate Authority. It has further been stated that the deponent to the said Opposition carefully considered the reply filed by the Petitioners on 7.1.2002 and 14.1.2002 and after hearing both the Petitioners and the witnesses, passed the Order. He has denied all allegations made by the Petitioners to the effect that proper procedure had not been followed and he reiterated that the Petitioners were guilty of serious malpractices.

10. In the reply to the Affidavit-in-opposition, the Petitioners have stated in Paras 6 and 12 that the Assistant Director as well as the Director were not authorized to take action and it is in that context that the only point that has been argued by Mr. Partha Sarathi Sengupta, learned Counsel for the Petitioners, is that, under the provisions of the Control Order of 1968, the Director and/or the

Assistant Director has jurisdiction to only take action within the territorial limits of Calcutta/Kolkata but in all other places, including Districts and sub-Divisions as well as Blocks, it is either the District Magistrate or the Deputy Commissioner, by whatever name called, who can take action. Mr. Sengupta therefore, has not entered into the merits of the case but has raised only the aforementioned point as would be evident from the Order sheet dated 21.9.2011 also. The same is quoted below:-

21.9.2011 W.P. No. 7942 (W) of 2002

Mr. Partha Sarathi Sengupta,

Mr. Somenath Bose,

Ms. Debjani Sengupta,

Mr. Uttam Chakraborty

Mr. Subrata Talukdar,

Mrs. Sucharita Chatterjee

Mr. Amit Kr. Nag,

Ms. Varsha Saha

Heard in-part.

Mr. Partha Sarathi Sengupta, learned Senior Counsel appearing for the Petitioners, has, at the initial stage and before entering into the merits of the case, raised a few points of legal importance which require to be taken into consideration. He has submitted that under the provisions of paragraph 3(b), 9, 10 and 15 of the West Bengal Kerosene Control Order, 1968, it will appear on a harmonious construction thereof, that the Director of Consumer Goods has jurisdiction only to intervene in matters within the periphery of Calcutta defined under paragraph 3(b) of the said Order. He submits that so far as Districts, Sub-Divisions and Blocks etc. are concerned, it is only the District Magistrate or the Deputy Commissioner, by whatever name he or she may be called has, who has the authority or jurisdiction to conduct search and seizure in such Districts, Blocks or other areas of the State of West Bengal, except Calcutta. He further submits that pages 35, 52, 53, 139 and 166 of the Paper Book are sufficient evidences to establish that the entire search and seizure was conducted at the instance of the Director of Consumer Goods and/or Assistant Director of Consumer Goods. He submits that Howrah cannot be said to be "Calcutta" as it is a completely separate and distinct district and therefore, no action can be initiated by either the Assistant Director or the Director of Consumer Goods.

In the instant case Mr. Paratha Sarathi Sengupta has submitted that the entire action including suspension, search, seizure and cancellation has been conducted at the behest of the Assistant Director of Consumer Goods which, according to him and, on the basis of the aforementioned submissions, amounts to an action

totally without jurisdiction and therefore de hors the provisions of the said Control Order of 1968.

These are some of the salient points put forth by Mr. Partha Sarathi Sengupta which require to be addressed by the Government. Since the Puja Holidays are fast approaching, it will not be possible to conclude hearing of this case at this juncture.

The State is represented by Mr. Subrata Talukdar, learned Senior Government Advocate, who will make his submissions on the aforementioned points and if even thereafter, it is felt necessary to enter into the merits, then Mr. Partha Sarathi Sengupta is granted leave to make further submissions.

Accordingly, let this matter be taken up for further hearing after the Puja Holidays on the 2nd November, 2011 under the same heading.

Tapen Sen, J.

(Quoted)

In order to deal with the aforementioned contentions of Mr. Sengupta, some provisions of the said 1968 Control Order will be necessary to be taken into consideration.

Firstly, the term "Calcutta" means the town of Calcutta and the adjoining areas within the jurisdiction of Calcutta Municipal Corporation and includes Bidhan Nagar. Para 3 (b) of the 1968 Control Order reads as follows:

3.(b) "Calcutta" means the town of Calcutta and the adjoining areas within the jurisdiction of Calcutta Municipal Corporation as amended in 1980 and includes Bidhan Nagar as notified under the West Bengal Government Township (Extension of Civil Amendments) Act, 1975.

(Quoted)

The word "Director" has been defined to mean the Director of Consumer Goods, Department of Food & Supplies, Govt. of West Bengal and includes any Officer not below the rank of Assistant Director who can perform all the functions of a Director including cancellation of licence. Para 3(d) of the 1968 Control Order reads as follows:-

3(d) "Director" means the Director of Consumer Goods, Department of Food and Supplies, Government of West Bengal and includes any officer, not below the rank of Assistant Director, Directorate of Consumer Goods, Food and Supplies Department, Government of West Bengal who can perform all the functions of the Director under this Order including cancellation of licence.

(Quoted)

11. The power of cancellation of licence has been conferred under para -9 which says that if it appears to the Director or the District Magistrate having jurisdiction

that an agent or a Dealer has indulged in any malpractices, he may ask the said Agent or Dealer to show-cause and suspend the licence. Para 9 deals with the provisions of renewal and/or grant of a licence. It also empowers the Director or the District Magistrate having jurisdiction to either refuse to grant or renew a licence under the said Control Order. Paras 8 and 9 read as follows:-

8. Renewal to grant or renew licence. The Director or the District Magistrate having jurisdiction, may, after giving the agent or he dealer concerned an opportunity of stating his case in writing and for reasons to be recorded in writing, refuse to grant or renew a licence under this Order.

9. Cancellation or suspension of licence. If it appears to the Director or the District Magistrate having jurisdiction that an agent or a dealer has indulged in any malpractice or contravened any provision of this Order or any condition of the licence or any direction given under paragraph 12 of this Order, he may forthwith ask the Agent or the Dealer to show-cause for the violations made of suspend the licence: Provided that the agent or the dealer who has been asked to show-cause or whose licence has been suspended shall be given an opportunity of being heard and the Director or the District Magistrate having jurisdiction shall pass an order in writing within 30 days from the date of serving the show cause notice or suspension of the licence taking any or all of the actions given below:

(i) he may let off the Agent or Dealer if sufficient cause has been shown;

(ii) he may pass an order by imposing a penalty which according to the gravity of the violations made will not be less than Rs. 10,000 in case of an Agent and Rs. 2,000 in case of a Dealer and revoke the suspension order if already served:

(iii) he may cancel the licence: Provided that the order shall be passed ex parte if the Agent or the Dealer whose licence has been so suspended or on whom show cause notice has been served fails to appear at the hearing.

(Quoted)

12. Para 10 deals with Appeals. It indicates that an Appeal will lie to the State Government in the Department of Food & Supplies in Calcutta, if the Order is passed by the Director of Consumer Goods and in other places, it will lie to the State Government if an Order is passed by the District Magistrate or the Deputy Commissioner of a District. Para 10 reads as follows:

10. Appeal.- [Any person aggrieved by an Order passed under paragraph 8 or paragraph 9 of this Order, may within 30 days from the date of the Order, prefer an appeal to the State Government in the Food and Supplies Department]-

(a) In Calcutta,-

(i) where the Order is passed by the Director of Consumer Goods, Department of Food and Supplies, to the State Government,

(ii) ***

(b) elsewhere,

(i) where the Order is passed by the District Magistrate or the Deputy Commissioner of a district, to the State Government,

(ii) where the Order is passed by any other officer authorized by the District Magistrate or the Deputy Commissioner of a district under clause (e) of paragraph 3, to the District Magistrate or the Deputy Commissioner, as the case may be, of the district.

(Quoted)

13. The power of entry, search and seizure is contained in para 15 of the said Order and it provides that the Director or the District Magistrate or such other Officer not below the rank of a sub-Inspector of Food & Supplies or a sub-Inspector of Police, as may be authorized in writing by the Director in Calcutta or the District Magistrate elsewhere, may take steps for search and seizure of the premises of an Agent or a Dealer. Para 15 of the said Control Order reads as follows:-

15. Powers of entry, search, seizure etc.- The Director or the District Magistrate or such other officer not below the rank of sub-Inspector of Food & Supplies, Government of West Bengal or a Sub-Inspector of Police, as may be authorized in writing in this behalf by the Director in Calcutta or the District Magistrate elsewhere may, with a view to maintaining supplies and securing compliance with the provision of this Order-

(a) enter and inspect the premises of any agent or dealer for the purpose of ascertaining if the provisions of this Order, the conditions of the licence other directions of the Director or the District Magistrate, as the case may be, are being complied with and seize any stock of kerosene in respect of which he has reason to believe that any contravention of this Order has been made, or is being made, or is about to be made;

(b) enter upon and inspect any premises in which he has reason to believe that any kerosene is being stored or possessed in contravention of the provisions of this Order;

(c) require an agent or dealer to produce before him any accounts, registers, vouchers or other documents relating to the sale or purchase of kerosene by such agent or dealer: Provided that the Block Development Officer having jurisdiction shall be competent to inspect the premises of any agent or dealer for the purpose of ascertaining if the provisions of this Order, the conditions of the licence other directions of the Director or the District Magistrate, as the case may be, are being complied with;

(d) ***

(Quoted)

14. It appears that in their Memorandum of Appeal before the Director (Annexure-P/7), the Petitioners had taken a specific plea with regard to the jurisdiction of the Assistant Director. The said ground No. (iii) is quoted below:-

III. For that the Order No. 9 of the W.B. Kerosene Control Order, 1968 only empowered the Director or the District Magistrate as the case may be to issue show-cause and order of suspension. But in the present case show-cause notice was issued by the Assistant Director and nowhere in the said show-cause notice stated that he was empowered by the Director to issue the notice. On the other hand it appears that the appellants were directed to appear before the Director of Consumer Goods on 14.01.02 not before the Assistant Director of Consumer Goods. As such the suspension-cum-show-cause notice dated 01.01.2002 is without any authority of law, illegal and also the impugned order dated 29.01.20 is without jurisdiction and colourable exercise of power and liable to be set-aside.

(Quoted)

15. Considering the aforementioned submissions, it would now be relevant to consider the following reasons. Let it be recorded that the Petitioner No. 1 is not a Dealer but is an Agent as would be evident from Annexure-P/1 at page 24 of the Writ Petition. It is a receipt showing that an Application for renewal of Kerosene Oil Agent's Licence No. AGT/ULU/1295 dated 13.5.1999 had been received and therefore, a Token was issued to the said Agent (Ajodhya Prasad Shaw) to carry on Kerosene Oil business till 31st March, 2001. Let it also be recorded that therefore, the Petitioner No. 1 being an Agent, its Licence had obviously been granted under the provisions of para 5 of the said Control Order which reads as follows:-

5. Grant of licence to agent.- (1) The Director may grant a licence to any agent in West Bengal authorizing him to carry on trade in kerosene as such agent.

(2) A licence granted under sub-paragraph (1) shall be in Form A and shall be subject to such conditions as are specified therein and such other conditions as the Director may lay down from time to time in the interest of fair distribution of kerosene within the State.

(3) No agent shall sell, supply or transfer kerosene to any person other than a dealer duly licensed under paragraph 6 of this Order, or a holder of a permit or delivery order issued under paragraph 11 of this Order.

(Quoted)

16. Upon a perusal of the para 5 quoted above, it is evident that the Director may grant a Licence to any Agent in West Bengal. Para 5 does not say that the Licence shall be only in respect of Calcutta.

Consequently, the submissions made with reference to the aforesaid provisions and specially, with regard to the provisions of paras 8, 9, and 10 that the

Director of Consumer Goods/ Assistant Director of Consumer Goods, in the instant case, could not have proceeded as they had jurisdiction only in Calcutta and not in Howrah, is not acceptable to this Court for the simple reason that the Petitioners' Licence is an Agent's Licence and not a Dealer's Licence.

Consequently, the point argued by Mr. Sengupta does not appeal to this Court. Moreover, the Director, in terms of para 3(d) includes any Officer not below the rank of an Assistant Director. Therefore, the Assistant Director was fully competent in this case.

17. It is further evident from Annexure-P/1 that the Token itself was issued by the Assistant Director and each of the extensions was also made under the seal and signature of the Assistant Director. It is thus evident that the Licensing Authority of the Petitioners' Licence is the Director/Assistant Director because the Petitioners are Agents and not Dealers.

18. Had it been a case where the Petitioners' claim was that they were "Dealers", their licence in that event, would have been issued under para 6 and then, of course, the question of Calcutta and/or other Districts as argued, could have been considered in the background of the definition of the word "Calcutta" as laid down in para 3(b). In this context, para 6 of the Control Order of 1968 lays down that the Director or the District Magistrate having jurisdiction, may grant a Dealer's Licence to deal in Kerosene Oil and therefore, the obvious interpretation is that if any person wants to carry on business within the periphery of Calcutta, the appropriate authority to grant such a Dealer's Licence in Calcutta, would be the Director but in other places, a Dealer's Licence can be granted by the District Magistrate having jurisdiction. Para 6 of the Control Order reads as follows:

6. Grant of licence to dealer.- (1) The Director or the District Magistrate having jurisdiction may grant a licence to any person authorizing such person to carry on trade in kerosene as a dealer.

(2) A licence granted under sub-paragraph (1) shall be in Form B and shall be subject to such conditions as are specified therein and such other conditions as the Director or the District Magistrate having jurisdiction may impose from time to time for the sake of fair distribution of kerosene.

(Quoted)

19. For the foregoing reasons, this Court is satisfied that there is no illegality in the search and seizure conducted and initiated by the Assistant Director. There is therefore no merit in this Writ Petition. It is accordingly Dismissed. However, there should be no Order, as to Costs.

Upon appropriate Application(s) being made, urgent Photostat Certified copy of this Judgment, be given/issued expeditiously subject to usual terms and conditions.