
(1998) 04 PAT CK 0074
In the Patna High Court
Case No : C.W.J.C. No. 2126 of 1987

M/s Sahu Trading Company	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 09-04-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1998) 2 PLJR 201

Hon'ble Judges : Chy. S. N. Mishra, J

Bench : Single Bench

Advocate : Ajay Kr. Thakur, Ritesh Kumar in 2126, M/s R.K. Agrawal, Raj Kr. Bhargav and Jitendra Kr. Sinha in 2222, for the Appellant; Madhav Pd. Yadav, for the Respondent

Final Decision : Allowed

Judgement

Mishra, J.—Since the common question of fact as well as law is involved in both the cases, the same have been heard together and are being disposed of by this common judgment. In these writ applications under Articles 226 and 227 of the Constitution of India the petitioners have challenged the validity of the orders dated 29.5.1986 and 29.10.1986 passed by respondent Sub Divisional Officer as well as District Magistrate, whereby the proceeding under the Bihar and Orissa Public Demands Recovery Act has been initiated against the petitioners, copy of the said orders are made Annexures 2 and 3 respectively to this writ application.

2. Briefly stated the case of the petitioners is that the petitioners, being wholesale licensee, are carrying on wholesale business of Kerosene oil since 1979 on the basis of the licence granted under the then relevant provisions of the Order. The petitioners purchased kerosene oil from the Patna depot of Indo Burma Petroleum Ltd. and sold the same at Sasaram to the retail licence dealer as per direction of the authority of the Supply department. Clause 3 of the Kerosene Oil (Fixation of Selling Prices) Order, 1978 provides that no dealer shall sell kerosene oil to any person at a price excess of the notified price. Clause 2(b)

of the said order defines the declared price in relation to different variety of kerosene oil, which is to be sold in accordance with the provisions as contained in clause 3 of the order as per the direction of the authority of the supply department. In terms of the provisions of the aforesaid order, the respondent Collector has to declare the maximum price of kerosene oil and, accordingly, the maximum price of kerosene oil was declared by the respondent Collector from time to time. It is alleged that in the year 1983 maximum price of kerosene oil was fixed at Rs. 1.86 paise per liter, which was subsequently revised in the year 1987 and the price was again fixed at Rs. 2.18 paise per liter, copy of the said orders fixing price of kerosene oil are made Annexure-1 series to the writ application. Obviously, the wholesaler and/or retailer has to sell kerosene oil at the rate fixed by the respondent authority. According to the petitioners, kerosene oil allotted to the petitioners was sold to the retail dealers strictly at the price fixed by the respondent authority from time to time.

3. A counter affidavit has been filed on behalf of the State respondents wherein statement made in the counter affidavit regarding fixation of price by the competent authority as well as selling the same by the petitioners at the rate fixed has not been denied.

4. Learned counsel for the petitioners has challenged the orders of the respondent Sub Divisional Officer as well as District Magistrate and also the threatened action of the respondent to initiate certificate proceeding for the purpose of realising the dues. in question, on the ground that the petitioners have strictly complied with the direction of the respondent authority while selling the kerosene oil to the retailers and, as such, the respondent authority cannot direct the petitioners to pay excess amount alleged to have been realised by the petitioners. It is then submitted that this is not a case of the respondent that the petitioners have realised excess amount than what has been fixed by the respondent authority. Further grievance of the petitioners is that the impugned order directing the petitioners to deposit a sum of Rs. 39,000/-and odd has been passed without issuing notice to the petitioners and/or giving any opportunity of being heard.

5. In opposition, learned counsel for the respondents has supported the action of the respondent District Magistrate and submitted that subsequently it was realised that the price fixed by the respondent authority was not in accordance with law and, as such, the petitioners are liable to pay the amount to that extent which has inadvertently escaped the attention of the respondent authority while declaring the maximum price of kerosene oil. Submission of the learned counsel for the State seems to be wholly misconceived and has to be rejected as such. As has been stated above, this is not a case of the respondent authority that the petitioners have realised the price excess than what has been fixed by the respondent authority, on the contrary, it is admitted position that the respondent authority has fixed the maximum price of kerosene oil from time to time and the petitioners sold the oil at the same fixed rate. There is no allegation whatever

that the petitioners have realised any excess amount from the retail dealers either. That apart, the order directing the petitioners to deposit the amount to the tune of Rs. 39,000/- and odd has been issued without even issuing notice and/or giving opportunity to the petitioners to explain the position. Mere perusal of the order it does not appear as to what is the basis of calculating the amount alleged to be realised from the petitioners. Accordingly, the orders dated 29.5.1986 and 29.10.1986, as contained in Annexures 2 and 3, are hereby quashed and consequently the writ applications are allowed but without cost. However, if the respondent authority, so desires, may proceed with the matter in accordance with law after giving opportunity to the petitioner of being heard.