
(2011) 09 AP CK 0105

In the Andhra Pradesh High Court

Case No : Writ Petition No. 25935 of 2011

M/s. Sri Sai Baba Agencies

APPELLANT

Vs

State of Andhra Pradesh and others

RESPONDENT

Date of Decision : 28-09-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Essential Commodities Act, 1955 — Section 6A

Citation : (2011) 09 AP CK 0105

Hon'ble Judges : Noushad Ali, J

Bench : Single Bench

Advocate : K. Raghuveer Reddy, for the Appellant; G.P for Civil Supplies, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner is a licensee under the A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980, authorised to deal in LPG Cylinders. He has assailed the orders passed by the Joint Collector, Nizamabad, the 2nd respondent herein, dated 9.09.2011 in file No. CS1/815/2011 suspending the licence pending enquiry for contravention of the Provisions of LPG (Regulation of Supply & Distribution) Order 2000 and A.P. Petroleum Products (Licensing and Regulation of Supplies) Order 1980 and the conditions of licence.

2. The Deputy Tahsildar (Enf.), Nizamabad along with the Assistant Supply Officer, Nizamabad Division and the Food Inspector, Nizamabad intercepted a vehicle bearing registration No. AP25T9649 and found it carrying 101 cylinders (100 domestic cylinders + 1 commercial cylinder). A sales boy and two other labourers working in the petitioner- agency were accompanying the consignment. On verification of the bills and the cylinders available in the vehicle, besides variations, it was found that cylinders were being supplied without proper bills. The cylinders and the vehicle were therefore seized alleging contravention of Clause 3(4) Schedule (1), condition 5, Clause 4(2), 7(1) (b), 10

of the LPG (Regulation of Supply and Distribution) Order 2000 and Clause 12 (i) (ii) (iii) of the A.P. Petroleum Products (Licensing and Regulation of Supplies) Order 1980.

3. Simultaneously, the investigation was made by the officials forming into three teams.

4. Team No. 1 consisting of Grain Purchasing Assistant, Bodhan and Deputy Tahsildar (Enf) Dichpalli, inspected the issue of refills to the consumers and conducted door to door verification of deliveries at different places and found that the dealer had supplied refills to the consumers without booking besides supplying the refills to unauthorised persons. The team also detected consumer passbooks and gas cylinders in a kirana shop supplied by the petitioner.

5. Team No. 2 consisting of Deputy Tahsildars (Enf) Armoor and Nizamabad inspected the godown and noticed that the confiscated cylinders, which were kept with the petitioner for safe custody were not available and on verification of records it was found that the cylinders had been sold to another agency, viz., Vanita Agency, Nizamabad. 10 such cylinders were caught along with an Auto bearing No. AP25V2564. The driver of the Auto gave a confessional statement in that regard. The dealer in an attempt to cover up, brought some empty cylinders to show them as confiscated cylinders.

6. Team No. 3 consisting of the Assistant Supply Officer, Nizamabad Division and Deputy Tahsildar (Enf) Bodhan inspected the office of the petitioner and found that he was not maintaining the records properly and found over writing in the records.

7. Thus on the basis of the aforesaid inspections a joint inspection report dated 9.09.2011 was filed before the 1st respondent alleging contravention of the Provisions of LPG (Regulation of Supply & Distribution) Order 2000 and A.P. Petroleum Products (Licensing and Regulation of Supplies) Order 1980 besides violating the conditions of the licence. Taking cognizance of the said report and on a consideration, the 1st respondent passed the impugned order suspending the licence pending enquiry.

8. Heard Sri Raguveer Reddy, learned counsel for the petitioner and learned Government Pleader for Civil Supplies.

9. The petitioner has approached this Court at the interlocutory stage of the proceedings suspending licence pending enquiry. No conclusive findings are recorded against the petitioner as yet. The jurisdiction of this Court under Article 226 being limited, the petitioner is not entitled to for the relief unless it is shown that the order is either arbitrary or without jurisdiction.

10. It is an admitted fact that the petitioner is a licensee under the A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980. Clause-28 states that no holder of a licence or registration certificate or supply card issued under the order or his agent or servant or any other person acting on

his behalf shall contravene, attempt or abet the contravention of any of the Provisions of the order or any of the conditions of the licence and if any such holder or his agent or servant contravenes any of the conditions, his licence or as the case may be, registration certificate or supply card may be cancelled or suspended for such period as may be specified by the licensing authority. The Proviso states that no order shall be made unless licensee has been given a reasonable opportunity of representing his case in writing and also an opportunity of hearing. Sub-Clause (2) however provides that pending action in sub-clause (1), the licensing authority may, for reasons to be recorded in writing, order an interim suspension of the licence.

11. In the instant case, it is not in dispute that the Joint Collector is the Licensing Authority and competent to pass order under Clause-28. Therefore, it cannot be gainfully contended that the impugned order has been passed without jurisdiction.

12. The learned counsel would, however, submit that even while exercising power, the Joint Collector and the Licensing Authority is under an obligation to issue notice and provide opportunity to the petitioner to defend his case. Placing reliance on the Proviso to Sub-Clause (1) it is contended that opportunity being mandatory cannot be dispensed with even in case where the licence is suspended pending enquiry. The counsel would seek to elaborate by saying that at the preliminary stage the licencing authority will be acting one sided by relying solely upon the reports without having the advantage of knowing the true facts of the case; therefore in order to ensure proper exercise of power, the principle contained in the Proviso shall be extended to the cases even at the interlocutory stages.

13. I am unable to accept the said contention. As noticed above sub-clause (2) has vested power unequivocally in the licensing authority to pass an interim order. The only requirement for exercising the said power is that the licensing authority should record its reasons. There is no warrant to import the principles contained in the Proviso to Sub-Clause (2), since such a Provision to provide opportunity is deliberately omitted in Sub-Clause (2). I am, therefore, of the view that the petitioner is not entitled for a notice or opportunity of being heard at the interlocutory stage under Sub-Clause (2).

14. The learned counsel while referring to the texture of the order which states that "therefore, the Form-B licence granted to.....is hereby suspended with immediate effect until further orders pending enquiry under Clause-28 (2) of the A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980....." would contend that the Control Order does not contemplate enquiry under sub-clause (2), therefore suspending the authorization pending enquiry under Clause-28(2) is not valid. According to the counsel, the enquiry, if any, is provided in Sub-Clause (1) but not in Sub-Clause (2). The said contention is misconstrued. The impugned order cannot be read nor is it capable of being read as suspending the licence pending enquiry under Sub-Clause (2). What it means

is that the licence has been suspended under the provisions of Sub-Clause (2) pending enquiry.

15. It is true that the Licensing Authority under the Control Order cannot pass interim orders or suspend the licence on the ground of mere pendency of enquiry u/s 6-A of the Essential Commodities Act as held by the Division Bench of this Court in *M. Shashikala v. The Collector, (C.S), Mahabubnagar & Another* 1997 (1) LS 297. In that case the learned Division Bench was dealing with a case where supply of essential commodities was stopped to the fair price shop on the ground that proceedings u/s 6-A of the Essential Commodities Act were pending without any action for cancellation or suspension of the authorization under the Control Order. The learned Division Bench while referring to the views expressed in other cases has held that the nature of proceedings u/s 6-A of the Essential Commodities Act and the proceedings for cancellation or suspension of authorization under the Control Orders are different and distinct and the authorities under the enactments are also different. It was therefore held that an authority under the Control Order has to take an independent decision in the matter instead of mechanically following the orders that may be passed u/s 6-A of the Essential Commodities Act or whether no orders u/s 6-A have been passed and proceedings are pending. The authority under the Control Order cannot pass interim orders pursuant to suspension on the ground of mere pendency of enquiry u/s 6-A of the Essential Commodities Act. The instant case in fact is different. The respondent considered the report of the inspecting team with reference to the Control Order and the conditions of licence and passed the impugned order.

16. Reliance is placed on *Filmore Service Station Vs. Joint Collector and Others*, to contend that the impugned order is not in conformity with Sub-Clause (2). The counsel would submit that the order which states that the licence has been suspended until further orders appears as though the suspension is for indefinite period. In the case cited, this Court was examining the suspension order which stated that the petitioner's retail licence No. 14 is hereby suspended.....until further orders. Considering the said order, this Court held that the requirements of Sub-Clause (2) were not satisfied since it was not made "pending action as in Sub-Clause (1)". In the instant case, the impugned order has clearly stated that the suspension of the licence has been ordered pending enquiry.

17. As noticed above, considering the inspection report and the gravity of the allegations the 2nd Respondent has suspended the licence of the petitioner, thus complying the requirements of Sub-Clause (2) of Clause-28. Therefore, the impugned order cannot be considered as arbitrary or contrary to the provisions of the Control Order. For the aforesaid reasons, the Writ Petition does not disclose any merits warranting interference of this Court.

18. The Writ Petition is accordingly dismissed. No costs.