
(1997) 02 KAR CK 0070

In the Karnataka High Court

Case No : Writ Petition 1116 to 1120 of 1996

Mysore City Etc. Kerosene Hawkers Sangha

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 06-02-1997

Acts Referred:

Citation : (1997) ILR (Kar) 796

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : Geethadevi, for M. Papanna, for the Appellant; N.K. Ramesh, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

G.C. Bharuka, J.—The petitioners herein have challenged the validity of the notices dated 9.12.1996 issued by the 4th respondent - Rationing Officer cum Assistant Director (Food) (ann. "D" to "G"). whereunder they have been directed to acquire a shop premises for setting up a retail outlet for distribution of kerosene oil.

2. It appears that the petitioners have been holding Hawker's licence under the provisions of Karnataka Kerosene Dealers Licensing Order, 1969, has been repealed by the Karnataka Essential Commodities Licensing Order, 1986. Therefore their licence granted up to December 1996 were justifiable only under the provisions of the existing licensing order. It further appears that on the strength of the Hawker's licences they were permitted to sell kerosene oil meant for distribution to card holders under the public distribution system.

3. Under Clause 2(f) of the 1986 Licensing Order "Hawker" has been defined thus -

"A person who carried kerosene from place to place for sale to persons other than a dealer; provided that the Licensing Authority may in public interest also specify the place or places in which. or hours during which, the hawker shall sell

kerosene."

4. It may be relevant to notice here that the State Government for enforcing the public distribution system in a more effective manner has made "The Karnataka Essential Commodities (Public Distribution System) Control Order, 1992." which has come into force with effect from 7th January 1993, i.e., the date of its publication in the official Gazette. Under the provisions of this order the essential commodities including kerosene oil can be sold to the card holders only through a Fair Price Depot as defined under Clause 2 (f) of the Order. This order does not authorise the distribution of kerosene oil through the hawker's as defined under Clause 4(2) of the 1986 Licensing Order. Under the PDS Control Order, a fair price depot has to be in a defined premises. In the case of VYAVASAYA SEVA SAHAKARA NEMA CO-OPERATIVE SOCIETY AND ANR. v. STATE OF KARNATAKA AND ORS. ILR 1997 KAR 640 I have considered in detail the respective provisions of the Essential Commodities Act and the Orders made by the Central Government and State Government u/s 3 thereof, regulating the supply of kerosene oil through public distribution system.

5. Now under the kerosene (Restriction on Use and Fixation of Ceiling Price) Order, 1993, (in short the Central Order) a clear distinction has been laid down between "Parallel Marketing System" and "Public Distribution System" under the Sub-clauses (i) and (j) to Clause 2 of the Central Order. These are to the following effect -

"Clause 2 (i) - PARALLEL MARKETING SYSTEMS means the system other than the public distribution system, under which a person imports, transport, packs, distributes or sells kerosene under his own arrangement.

Clause 2(j) - "PUBLIC DISTRIBUTION SYSTEM" - means the system of distribution, marketing or selling of kerosene at declared price through a distribution system approved by the Central or State Government.

6. For the said reasons, I am of the considered opinion that the petitioners may be granted licence under the 1986 Licensing Order for sale of kerosene oil under the "parallel marketing system" as defined under Clause 2(i) of the Central Order, but they cannot be permitted to supply kerosene oil under the public distribution system to the card holders under the hawker's licence granted under the 1986 Licensing Order.

7. For the said reasons, in my opinion, the petitioners are not entitled to the relief claimed. Accordingly, the writ petitions are dismissed, but without costs.