

(2015) 05 RAJ CK 0108

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 1366, 1562, 1564, 1572, 1575, 1576, 1579, 1580, 1631, 1633, 1634, 1761, 1918, 3081, 4157, 4321 and 4349 of 2015

Rajmal Jain and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 07-05-2015

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g)
Essential Commodities Act, 1955 — Section 3, 3(1), 5

Citation : AIR 2015 Raj 169

Hon'ble Judges : Sunil Ambwani, C.J.; Banwari Lal Sharma, J

Bench : Division Bench

Advocate : Sandeep Shah, Pankaj Sharma, Rakesh Matoria, Vikas Bijarnia and Sushil Solanki, for the Appellant; P.S. Bhati, AAG, Sajjan Singh, L.R. Bishnoi, A.K. Rajvanshi, Kuldeep Mathur and Ravi Bhansali, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sunil Ambwani, C.J.

1. We have heard learned counsel appearing for the parties.
2. By this writ petition, the petitioners having valid licenses for "barrel point" sale of diesel in the respective districts of the State of Rajasthan, for the period upto 2016 and 2017 (for two years from the date of issue or renewal), have challenged the order passed by the Additional Food Commissioner, Food and Civil Supplies Department, Government of Rajasthan dated 19.12.2014, as well as the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 2005 (for short, "the Central Order of 2005") issued by the Ministry of Petroleum and Natural Gas on 19th December, 2005 under section 3 of the Essential Commodities Act, 1955 and the consequential actions, by which their licenses have been cancelled during the period of their validity.

The petitioners have also prayed for declaration of clauses 2(d) and 3(4) of the Central Order of 2005, as unconstitutional and ultra vires and to declare that the Order of 2005 are not applicable to the State of Rajasthan where the Rajasthan Petroleum Products (Licensing and Control) Order, 1990 (for short, the State Control Order of 1990") is in force and is holding the field.

3. All the petitioners in these writ petitions have valid and, or renewed licenses under State Control Order, 1990, which authorizes them to sell diesel in retail, with maximum storage capacity of 4000 litres to be stored in drums. They can purchase the diesel from any of the authorized outlet of the Oil Companies. The licenses initially granted for a period of two years, have been renewed and are valid for periods upto the year 2016 or 2017. All the licenses were cancelled by the orders passed by the Licensing Authority in pursuance to the State Government order dated 19.12.2014, giving rise to the writ petitions.

4. It is submitted by learned counsels appearing for the petitioners that the State Government was authorized under the delegation of powers vide S.O. 681(E) dated 30th November, 1974 issued by the Central Government in exercise of the powers conferred by Section 5 of the Essential Commodities Act, 1955 to make orders to provide for the matters specified in clauses (d), (e), (f), (g), (h), (i), (ii) and (j) of sub-section (2) thereof, in relation to all essential commodities other than foodstuffs and fertilizers (whether inorganic, organic or mixed), exercisable by the State Government or in relation to the Union Territory, by the Administrator thereof, subject to certain conditions. It is submitted that in exercise of these delegated powers, the State Government made the Rajasthan Petroleum Products (Licensing and Control) Order, 1990 notified on 8.8.1991. The State Control Order, 1990 was amended by a Notification dated 22.11.1993 amending the definition of "dealer" under clause 2(c) of the State Control Order, 1990. The amendment also inserted sub-clause (5) in clause-3. The definition of "dealer" and sub-clause (5) of the State Control Order, 1990 are quoted as below:--

"(c) "Dealer" means a person, a firm, an association of persons or a cooperative society engaged in the business of purchase, sale or storage for sale of any Petroleum products and includes:--

(i) Authorized dealer of any Oil Company; and

(ii) Barrel point Dealer engaged in the business of purchase of High speed Diesel from an authorized dealer of any Oil Company and sale or storage for sale of the same; but does not include an Oil Company."

"(5) In the rural areas where no authorized retail outlet dealer for High Speed Diesel exists, the barrel point dealers can sell the High speed Diesel in such areas under such directions which may be issued by the Government or District Collector from time to time:

Provided that no license shall be issued to carry on business as Barrel Point

Dealer within a radius of 10 K.M. or any regular Diesel retail out let of any Oil company."

5. It is submitted that the barrel point sale was provided to fulfil the demand of the people of Rajasthan living in semi-urban or rural areas. The State has the largest geographical area in the country. Considering the shortage of petrol pumps and distribution of diesel, which was necessary for the purposes of agriculture, transportation, generation of electricity and also for other use, the State Government issued licenses for "barrel point" sale. These licenses numbering 320 in the 32 districts of the Rajasthan in the year 1994, were increased to 1087 upto 15.12.2004.

6. Learned counsels appearing for the petitioners submit that the licenses for barrel point sale were issued under the valid State Control Order, 1990 made by the State Government under the delegated powers of Central Government and so long as the State Control Order, 1990 is valid, and the petitioners have not breached the conditions of the State Control Order 1990 and the license, their licenses cannot be cancelled by the State Government. The Licensing Authority could only exercise the power of cancellation of license under sub-clause-11 of the Control Order, 1990, which could be subject to Appeal under clause-20 and Revision under clause-21. The petitioners' right guaranteed under Article 19(1) (g) of the Constitution of India has been violated by cancellation of their licenses by a general order dated 19.12.2014.

7. It is submitted that the reasons given in the order dated 19.12.2014, namely, that the "barrel point" licensees districts bordering the State of Punjab and Haryana are selling the diesel on a lesser rate as the prices of diesel are much less in the State of Punjab and Haryana as compared to the State of Rajasthan and thereby causing loss of Value Added Tax to the State Government, as well as that the subsidized kerosene is being diverted by the barrel point dealers, are not valid reasons, inasmuch as, most of the "barrel point" licensees, who have filed the writ petitions, are situate in eastern and southern Rajasthan, which is at a long distance from Haryana and where the illegal sale of diesel brought from Haryana is neither possible nor is profitable due to its transportation. It is submitted that the respondents could have increased the vigil and apprehended the culprits where the diesel was brought without authority from the State of Punjab and Haryana or the subsidized kerosene was diverted. The reasons of illegal sale and diversion of kerosene are wholly arbitrary and discriminatory to be made the basis of cancellation of all licenses in the State of Rajasthan.

8. Learned Additional Advocate General for the State of Rajasthan submits that the policy of barrel point sale was brought into force in the State of Rajasthan vide Notification dated 22.11.1993, amending the State Control Order, 1990 issued by the State Government under the delegated powers of the Central Government under section 5 of the Essential Commodities Act, 1955. The "barrel point" sale, considering the shortage of supply of diesel in rural areas, as number of petrol pumps were limited, was not allowed within the radius of 10 K.M. of

petrol pump. The "barrel point" dealers were allowed to store the diesel in drums with the maximum quantity which could be stored at 4000 litres. The Central Government made the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 1998 (for short, the Central Order of 1998"), which was replaced by the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 2005. The Central Order of 1998 was rescinded and thereafter, the Central Order of 2005 has overriding effect over all the orders issued by the Central Government and the State Government. Clause-10 of the Central Order of 2005 reads as follows:--

"10. Overriding effect.- The provisions of this Order shall have overriding effect notwithstanding anything to the contrary contained in any order made by a State Government or by an officer of such State Government before the commencement of this Order except as respect anything done or omitted to be done thereunder before such commencement."

9. It is submitted that the Joint Secretary, Government of India, Ministry of Petroleum and Natural Gas, New Delhi wrote a letter dated 24.1.2001 to the Chief Secretary of the Rajasthan requesting that necessary directions be issued to the District Collectors to close down all the petrol pumps, retail outlets or any other arrangement, which is in contravention of the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 1998. Since the barrel point licenses were issued under the State Control Order, 1990 and subsequently, the Government of India issued the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 2005 and the right to sell the petroleum products was only limited to the Oil Companies, and their authorized retail outlets only, the State Government, issued guidelines to the District Supply Officers vide order dated 27.7.2007 and directed to act upon the same. The guidelines provided for survey to be made of all the "barrel points" dealers and the area in need of such "barrel points" dealers, to identify the area where Rajiv Gandhi Kisan Seva Kendra can be established. In compliance to the communication dated 24.1.2001 and the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 2005, the order dated 19.12.2014 was issued to close all barrel points in the State of Rajasthan.

10. It is stated that on availability of 2441 petrol pumps in the State of Rajasthan and about 832 Rajiv Gandhi Kisan Seva Kendras authorized by the petroleum companies under the supervision of the Ministry of Petroleum and Natural Gas, the diesel is available in all the semi-urban and rural areas and thus, it is no longer necessary to have "barrel point" sale, and in any case, with the issuance of the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 1998 and the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 2005 replacing the Central Order of 1998, the State Government was denuded of

the authority to make or continue with the provisions of the State Control Order, 1990 issued in pursuance to the delegated powers under S.O. 681 (E) dated 30th November, 1974.

11. It is submitted that the delegation of powers by the Central Government to the State Government under S.O. 681 (E) dated 30th November, 1974 issued under section 5 of the Essential Commodities Act, 1955 ceased, on the issuance of the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 1998, which provided for marketing and selling of motor spirit and high speed diesel only by the persons authorized by the Central Government.

12. In order to appreciate the submissions, we may reproduce the contents of the order of the Ministry of Petroleum and Natural Gas, Government of India, New Delhi dated 24th January, 2001 as follows:

"This Ministry has been receiving reports of the existence of certain Petrol Pumps (Motor Spirit and High Speed Diesel Retail Outlets) operating in different parts of the country which have not been established through the oil companies. In terms of the provisions of the Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractices) Order, 1998, (a copy enclosed) delivery or sale of motor spirit or HSD can be made only by dealers of oil companies only from authorized retail pump outlets and the oil companies, have to be authorized by Central Government for sale of MS and HSD to consumers or dealers. Any other form of possession, sale, purchase or exchange of MS or HSD, under this order, is unauthorized and action can be taken in terms of the provisions of Essential Commodities Act, 1955.

Further, it has been brought to the notice of this Ministry that in some cases the State Governments have even given licenses for operating such Petrol Pumps/ Retail Outlets in contravention of the provisions of the Motor Spirit and High speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractices) order, 1998. You may kindly recall that in a fire accident, recently, in the district of Mathura in UP many people lost their lives and there was substantial loss of property. It is understood that the dealer was in unauthorized possession of Motor Spirit and High Speed Diesel.

You are requested to kindly issue necessary orders to all concerned specially District Collectors to immediately take action to close operations of all such unauthorized Petrol Pumps/Retail outlets or any other arrangement in existence which is not in conformity with the provisions of the Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractices) Order, 1998.

I would suggest that a campaign to identify and close operation of such unauthorized petrol pumps, MS-HSD retail outlets or any such unauthorized arrangements, if in existence in your State/UT, so that this unauthorized activity is brought to an end under intimation to this Ministry. You may kindly direct the

concerned Deptt/officials to take an early action and inform the Ministry as to the action taken."

13. The Central Government has made the Essential Commodities Act, 1955 in exercise of the powers under Entry 53 of List-I of Seventh Schedule of the Constitution of India. By S.O. 681 (E) dated 30th November, 1974, the power conferred on the Central government under section 3(1) of the Essential Commodities Act, 1955 was delegated to the State Government and in exercise of such delegation of powers under section 5 of the Essential Commodities Act, 1955, the Rajasthan Petroleum Products (Licensing and Control) Order, 1990 (the State Control Order 1990) was issued by the State Government. The delegation was subject to any Control Order to be issued by the Central Government which is in conflict with the Control order issued by the Central Government. Clause (a) (iii) of S.O. 681(E) dated 30th November, 1974 by which powers were delegated by the Central Government to the State provided as follows:--

"(iii) that no order shall be issued in pursuance of the powers hereby delegated if it is inconsistent with any order issued by the Central Government under the said Act."

14. With the issuance of the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 1998, in which the marketing and sale of motor spirit and high speed diesel is prohibited by any person except by the persons authorized by the Central Government, the "barrel point" sale in the State of Rajasthan and the State Control Order, 1990 providing for issuance of licenses for "barrel point" sale, came in direct conflict and was thus impliedly rescinded.

15. With the issuance of the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 1998 by the Central Government and thereafter, substituting it by Central Order of 2005 on 19th December, 2005, the provisions of the State Control Order, 1990 in so far as they were inconsistent with the Central Order, 1998 and thereafter, 2005, were impliedly rescinded, and that to avoid any doubts it was provided in clause 10 of the Central Control Order, 2005 that the provisions thereof shall have overriding effect notwithstanding anything contrary contained in any order made by the State Government of the order, except as respect of anything done or omitted to be done thereunder before such commencement. The "barrel point" sale in the State of Rajasthan, which was not authorized by the Central Government and was in direct conflict with the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 1998 and the Central Order of 2005, thus could not be permitted as it was not authorized by the Central Government.

16. We have also examined discontinuance of barrel point sale on the ground of public interest. At the time when the barrel point sale was introduced in the State of Rajasthan in 1993, there were limited number of petrol pumps in the

districts in rural areas. These petrol pumps have now increased to 2441 in the State of Rajasthan and we are informed that issuance of about 1500 licenses is in the process. The Central Government has also introduced a scheme of sale of petroleum products through Oil Companies in semi urban and rural areas through Rajiv Gandhi Kisan Seva Kendras and that about 832 Rajiv Gandhi Kisan Seva Kendras have been established in the semi urban and rural areas of State of Rajasthan.

17. It may be possible, as alleged by the petitioners, that in the districts of Rajasthan, which are bordering Punjab and Haryana, where the price of diesel is less as compared to the State of Rajasthan, Oil Companies are not interested in establishing petrol pumps, and Rajiv Gandhi Kisan Seva Kendra in the border areas. In some of the Tehsils in the border areas, there may only 2-3 petrol pumps, which are not able to fulfil the need of the persons residing in the areas. The necessity of opening more petrol pumps and Rajiv Gandhi Kisan Seva Kendra in the border areas, cannot be a ground, on which we may interfere with the policy of the Central Government. The State Government may consider to open more petrol pumps in the rural areas bordering the State of Punjab and Haryana, to fulfil the need of the local residents. It may also be advisable to the State Government to increase the surveillance in the bordering areas to stop smuggling of diesel and the consequent loss of Value Added Tax, but that by itself cannot be a ground to challenge the policy decision of the Central Government for regulation of supply, distribution and prevention of malpractices under the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 2005 issued under the Essential Commodities Act, 1955.

18. All the writ petitions are consequently dismissed and the stay orders are vacated.

19. At this stage, it is stated that the petitioners having stocks of barrel point sale, which they are possessing in terms of the interim orders of this Court, may be permitted to sell such stocks. All the petitioners will notify the stock to the District Supply Officer within three days and they will be permitted to sell the notified stocks, which are entered in their stock registers as on date within a period of 15 days.

20. A copy of this order will be placed in all the connected files.