
(2014) 08 AHC CK 0136
In the Allahabad High Court
Case No : Misc. Bench No. 1788 of 2013

Ram Krishna Soni

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 28-08-2014

Acts Referred:

Constitution of India, 1950 — Article 16, 21, 226, 32
Criminal Procedure Code, 1973 (CrPC) — Section 39

Citation : (2014) 08 AHC CK 0136

Hon'ble Judges : Devi Prasad Singh, J;Arvind Kumar Tripathi, J

Bench : Division Bench

Advocate : Y.S. Lohit, Advocate for the Appellant

Final Decision : Allowed

Judgement

Devi Prasad Singh, J.—Instant petition under Article 226 of the Constitution of India has been preferred challenging the impugned order dated 28.4.2012 (Annexure-1 to the writ petition) by which petitioners' application for renewal of the retail kerosene oil licence under one time licence scheme has been rejected. The petitioners were having kerosene oil licence under UP Kerosene Control Order 1962 (in short control order) for Nigohan, Rampur Garhi Jamuni, Bhawakhera, Udaipur, Brahmdaspur, Karanpur and Baghauhna. In the year 1991 the petitioners had applied for renewal of licence under Rule 8(2) of the Control Order (supra). Application moved by the petitioner seems to be not considered hence, he filed a Writ Petition No. 96 of 1991. The order of renewal was refused on 26.11.1991. Hence, petitioner preferred another writ petition bearing no. 3973 (MB) 1991 in which interim orders were passed on 6.12.1991 and 20.12.1991 providing therein that in case license for quota has not been canceled, modified or suspended, the respondent shall continue to supply kerosene oil for the purpose of distribution to the consumers. However, the writ petition was dismissed as infructuous along with other bunch of writ petitions connected with the Writ Petition No. 4043 of 1991 and 4042 of 1991.

2. Feeling aggrieved the petitioner had preferred SLP bearing no. 1979 of 2003 in the Hon"ble Supreme Court. Their Lordship of Hon"ble Supreme Court had decided the appeal no. 1979 of 2003 with liberty to apply for one time licence under the amended control order. The operative portion of the order passed by Hon"ble Supreme Court in the appeal is reproduced as under:-

"The learned counsel for the petitioners has brought to our notice a Notification dated 19.4.1994 whereby U.P. Kerosene Control (XIVth Amendment) Order, 1994 has been published whereunder the State Government had introduced the scheme of "one time license" and discontinued renewal of licence. In view of this amendment, no relief can be allowed to the petitioners in the present proceedings. The Petitioners are at liberty to apply for one time licence under the Amended Control Order. With that observation, the special leave petitioner is dismissed."

3. A perusal of the order passed by the Hon"ble Supreme Court reveals that the reason for dismissal of appeal was the 14th amendment done by the U.P. Kerosene Control Order in the year 1994 providing the scheme of one time licence and discontinue the provision with regard to regular renewal of licence. It appears that in spite of observation made by Hon"ble Supreme Court competent authority had not considered the petitioners" case for grant of one time license.

4. The submission of the learned counsel for the petitioner, Shri Y.S. Lohit is that in the control order, by amendment, government provided that there shall be one time license which shall be valid unless canceled by Licensing Authority. The copy of the amendment done by the notification dated 19.4.1994 has been filed as Annexure-7 to the writ petition. The "Licensing Authority" has been defined as District Magistrate of the District which includes Additional District Magistrate (Civil supplies) or the District Supply Officer of the District to perform any of the functions of the Licensing Authority. Clause 8 of the amended control order as contained in Annexure-7 to the writ petition is reproduced as under:-

"A licence granted under this order shall be one time licence and shall be valid unless cancelled by the Licensing Authority under this order:-

Provided that a licence granted before the commencement of the Uttar Pradesh Kerosene Control (Fourteenth Amendment) Order, 1994 shall be valid for a period for which it is granted and if the licence at his option applies for one time licence before the expiry of period of validity of the existing licence, in that case, the proportionate fee of the remaining period of the existing licence shall be adjusted towards the fee prescribed for one time licence."

5. The petitioner has set up a case that at the time when litigation was continuing (supra) there was no provision with regard to governing and grant of license except the provision incorporated through amendment (supra) with regard to grant of one time license. The averments contained in para 6, 7 and 8 to the writ petition has not been denied with the remark of "No comments". It has been stated in counter affidavit (para 12) that petitioners" application for

retail kerosene oil distributor has been considered in accordance to law and it being against the spirit of conditions contained in Government order dated 27.9.1990 renewal has been rejected. A defence has been setup by the State that those licensee whose license has been renewed on one time basis, come within the purview of renewal under the aforesaid government order dated 27.9.1990.

6. The impugned order passed by District Magistrate dated 28.4.2012 has been defended to be lawful and justified. There appears to be no room of doubt that originally petitioners' writ petition was dismissed along with bunch of writ petitions on 19.11.2002 without recording finding on merit with regard to petitioners' matter as infructuous. Thus it is evident that this court had not considered the petitioners' case on merit but dismissed the writ petition along with bunch of writ petitions as infructuous seems to be inadvertently. When the matter brought up before Hon'ble Supreme Court in Special Leave Petition, attention of court was invited to the amendment done in the year 1994 (supra).

7. Different communication between the authorities, as brought on record reveals that on one or other pretext government and its authorities have not considered the petitioners' application for grant of "one time licence" in spite of fact that the Special Secretary Government of U.P. recommended to consider it, in the light of 1994 amendment. Application was rejected by the licensing authority and affirmed by the appellate authority. Hence, the petitioner has filed a Writ Petition No. 6168 of 2011 which has decided after hearing learned counsel for the petitioner and learned Standing counsel and this court considered the 1994 amendment in the light of observation made by Hon'ble Supreme Court (supra). The finding has been recorded by this court that government order dated 26.9.1990 relied upon by the respondents seems to be not applicable in view of subsequent amendment done on 19.4.1994 (supra). The observation made by this Court in the judgment and order dated 10.2.2012 while allowing the writ petition is reproduced as under:-

"After considering the argument advanced by the parties' counsel, it appears that before the Supreme Court, attention was invited to the notification dated 19.4.1994 by which the Control Order was amended in 1994. By amendment, the State Government provided for grant of one time licence to the licensee. Meaning thereby, the provision with regard to renewal of licence has been revoked. Keeping in view the amendment contained in the Control Order (supra), the argument advanced by the petitioner's counsel seems to be correct that the Government Order dated 26.9.1990 shall not be applicable in view of subsequent amendment done in U.P. Kerosine Control Order vide notification dated 19.4.1994. In view of above, the appellate authority as well as the original authority has been failed to exercise jurisdiction vested in them. They have not taken note of the judgment of Hon'ble Supreme Court whereby the State Govt. took a stand and invited attention to the amendment done in the Control Order vide notification dated 19.4.1994. Thus, the impugned order not only suffers

from vice of arbitrariness but also suffers from non-application of mind.

In view of above, the writ petition deserves to be and is hereby allowed. A writ in the nature of certiorari is issued quashing the impugned orders dated 15.9.2011, 28.4.2005 and 6.9.2003 (Annexures, 1, 2, 3 and 19 respectively) with consequential benefits. The respondents are directed to reconsider the petitioner's case for grant of one time licence keeping in view the amendment made in the Control Order by notification dated 19.4.1994 as well as observation of Hon'ble Supreme Court (supra), expeditiously, say within a period of two months from the date of receipt of a certified copy of the present order. The writ petition is allowed accordingly. No order as to costs."

8. At the face of record while allowing the writ petition it has been held that the government order dated 26.9.1990 shall not come in the way to consider the petitioner's case for grant of "one time licence" being based on subsequent amendment dated 19.4.1994. But ordinarily as system works in this country, for some unforeseen reason, by impugned order representation has been again rejected with the finding that in view of government order dated 27.9.1990 one time licence cannot be given. The District Magistrate relied upon the observation made by Commissioner, Lucknow Division, Lucknow (appellate authority) while deciding the appeal by an order dated 15.9.2011.

9. It is the irony of fate that the District Magistrate, Lucknow had relied upon the appellate order passed by the Divisional Commissioner, Lucknow Division, Lucknow closing his eyes to the finding recorded by this court. While deciding writ petition vide judgment and order dated 10.2.2012 (supra) the observation made by the appellate authority in his judgment dated 5.9.2011 has been reiterated though same has been quashed by this Court by the judgment and order dated 10.2.2012 in writ petition no. 6168 of 2011, a copy of which has been annexed as Annexure no. 2 to the writ petition (supra). The order of appellate authority requires to be reproduced, which is as under:-

10. After referring the appellate order the District Magistrate had referred the observation made by this Court in the judgment and order dated 10.2.2012 and again banked upon the government order dated 26.9.1990 under the guise of subsequent government order dated 28.4.2005. The observation made by the District Magistrate in the impugned order is reproduced as under:-

11. It appears that the government, while issuing the order dated 28.4.2005, had banked upon the present government policy and declined to grant licence under the Government order dated 26.9.1990. Neither District Magistrate nor the State Government has taken note to the notification dated 19.4.1994 which provides for grant of one time license. The petitioner's counsel submits that petitioner suffers because of pendency of writ petition for about six years in this Court and later on because of pendency of appeal.

12. It has specifically been pleaded in para 16 of the writ petition that one time license has been refused since the petitioner had failed to fulfill the demand and

impugned order has been passed at the persuasion of District Supply Officer and one Munna Baba. The averments contained in para 16 to the writ petition with regard to demand raised by District Supply Officer is reproduced as under:-

"that in a writ petition challenging the order of Commissioner passed in petitioner's appeal, any person who in violation of this Hon'ble Court and Apex Court consecutive directions, might have been given quota card by the authorities, may not be necessarily impleaded. Nobody sought impleadment in earlier writ petition pending for 6 years or in WP No. 6168 of 2011 (MS) challenging Commissioner's order pending several months but after more than a month from judgment dt. 10.2.2012, few applicants filed applications for its recall and for impleadment including Sri Munir Khan s/o. Sri Habib Khan (who are not licensee but quota card holder by agreement) who on 7.5.2012 admitted on cell-phone no. 9451504748 during talks with Sri Muna Lal Giri alias Munna Baba from cell-phone no. 8090358503 of Sri Satya Prakash (petitioner's son) that the order dt. 28.4.2012 is got issued giving Rs. 57,000/- (Fifty seven thousand) to the DSO. When petitioner informed that it is recorded in CD the DSO started requesting on cell-phone no. 9415190441 to come to meet with immediately. On 25.1.2013 the application for impleadment has been rejected but petitioner's application seeking appropriate direction in these circumstances was also rejected granting liberty to approach appropriate forum as nay act of flouting any direction in a judgment may not be taken by that very Bench which decided the writ petition. For ready reference, a copy of typed material of the talks between Sri Muna Lal Giri alias Munna Baba & Sri Munir Khan and also of petitioner & Sri Budhi Sagar Dubey DSO is being annexed as Annexure No. 18."

13. The averment contained in Para 16 of the writ petition is denied on the basis of not been substantiated. For convenience Para 19 of the counter affidavit filed by the District Supply Officer, Lucknow is reproduced as under:-

"That the averments contained in paragraph 16 of the writ petition are not admitted in the manner stated in reply thereto, it is submitted that the allegation mentioned in paragraph under reply, have not been substantiated by any documentary evidence, hence they are denied."

14. The averment contained in Para 16 of the writ petition contained the cell phone number as well as recording of the conversation between District Supply Officer and Munna baba. The copy of typed material of alleged conversation has been filed as Annexure-18 to the writ petition. It is strange that in spite of the fact that typed copy of the conversation imputing allegation with regard to bribery has been filed as Annexure-18 to the writ petition with specific pleading (supra) in the writ petition, State or its authorities had not taken any trouble to investigate the matter.

15. From the factual matrix on record it appears that the petitioners son during conversation with Munna Lal Giri @ Munna Baba came to know that District Supply Officer informed that the impugned order has been passed at the behest

of Munna Lal on payment of Rs. 57,000/- to the District Supply Officer. From the fact borne out from the pleading on record is that impugned order has been passed on the persuasion and noting of District Supply Officer who was paid an amount of Rs. 57,000.

16. Prima facie non-compliance of judgment of this Court (supra) and non-consideration of amendment done in the year 1994 (supra) by the licencing authority raises reasonable doubt with regard to fairness in passing the impugned order and the involvement of extraneous reasons, may not be ruled out.

17. Whether this court or the judges, holding Constitutional office should close their eyes with regard to the material brought on record which prima facie goes against the District Supply Officer/Licencing Authority who appears to have proceeded for extraneous reasons and considerations. We feel that in case we do not direct for appropriate investigation keeping in view the serious allegations and the supporting material brought on record by the petitioner, we shall be shirking of our responsibility to dispense justice in true constitutional spirit. Accordingly it shall be appropriate to refer the matter for a thorough probe to State Agency.

18. u/s 39 of the Code of Criminal Procedure every person aware of the commission of or of the intention of any person to commit any offense shall be liable to give information to nearest Magistrate and Police Officer of such commission and it shall be obligatory on the part of such officers to take immediate note of the information and proceed in accordance to law.

19. In the present case information with regard to commission of crime under Indian Penal Code read with Anti Corruption Act 1988 has been brought on record and being constitutional functionary it shall be obligatory on the part of this Court to issue appropriate order or direction for appropriate investigation in accordance to law.

20. It is one of the rare case where a citizen dared to bring on record the spoiled system of our governance where he has been kept waiting for justice since more than two decades and in spite of observation made by the Hon'ble Supreme Court, the amended control order (supra) deliberately seems to be not taken into account while adjudicating controversy by the Licensing Authority under the teeth of judgment of this Court (supra). The pleading and material on record shows that there has been recommendation at appropriate level to consider the petitioner's case for grant of one time license under the amended control order (supra) that too has been sidelined. It seems to be an incident of corrupt practice punishable under Anti Corruption Act as well contempt of this Court being passed in contravention of the judgment (supra).

21. The final judgment (supra) of this Court appears to be deliberately ignored (supra) under the teeth of observation made by Hon'ble Supreme Court while deciding the appeal. The daring act of the authorities shows how the system has

become thick skinned to circumvent the judgment and order of this court for extraneous reasons or to teach the lesson to a person who comes to court to avail justice.

22. Judgments which attained finality can not be permitted to remain uncompiled and in case, it is done, it shall be antithesis of the rule of law. Whatever benefit petitioner was entitled at the time of judgment of Supreme Court or this Court at later stage (supra) cannot be drowned by deliberate commission or omission of State or its authorities.

23. One of the argument which emphasized by the learned Standing counsel is delay caused on account of pendency of litigation since more than decades. The submission is that power under Article 226 of the Constitution of India should not be exercised after such delay. Argument advanced by learned Standing counsel seems to be not sustainable. The reason is that no one should suffer for the lapses or commission or omission on the part of court, as has been held in 1993(11) LCD 487, S.S. Barathokey Vs. Chairman U.P. Seeds and Tarai Development Corpn. Ltd. and another.

24. In one other case reported in Royal Orchid Hotels Limited and Another Vs. G. Jayarama Reddy and Others, their Lordship of Hon"ble Supreme Court considered this aspect of the matter and reiterated the settled proposition of law that one who is not vigilant and does not seek intervention of the Court within reasonable time from the date of accrual of cause of action or alleged violation of constitutional, legal or other right is not entitled for relief under Article 226 of the Constitution.

25. However, in the present case the petitioner has been contesting to secure his right without any break. Hence it can not be said that he has at any stretch of time kept mum to secure his statutory or constitutional right.

26. In the same case (supra) their Lordship of Hon"ble Supreme Court had considered the circumstances under which power under Article 226 of the constitution of India should be exercised even at belated stage.

27. While considering the earlier pronouncement of Hon"ble Supreme Court their Lordships (supra) reaffirmed that where a litigation is continuously striving for justice the delay shall not come in the way to grant relief under Article 226. The relevant portions from the judgment of Royal Orchid Hotels (supra) are reproduced as under:-

"27. While dealing with the question of delay, this Court observed:(Dehri Rohtas case, SCC pp. 602-03, paras 12-13)

"12. The question thus for consideration is whether the appellant should be deprived of the relief on account of the laches and delay. It is true that the appellant could have even when instituting the suit agitated the question of legality of the demands and claimed relief in respect of the earlier years while challenging the demand for the subsequent years in the writ petition. But the

failure to do so by itself in the circumstances of the case, in our opinion, does not disentitle the appellant from the remedies open under the law. The demand is per se not based on the net profits of the immovable property, but on the income of the business and is, therefore, without authority. The appellant has offered explanation for not raising the question of legality in the earlier proceedings. It appears that the authorities proceeded under a mistake of law as to the nature of the claim. The appellant did not include the earlier demand in the writ petition because the suit to enforce the agreement limiting the liability was pending in appeal, but the appellant did attempt to raise the question in the appeal itself. However, the Court declined to entertain the additional ground as it was beyond the scope of the suit. Thereafter, the present writ petition was filed explaining all the circumstances. The High Court considered the delay as inordinate. In our view, the High Court failed to appreciate all material facts particularly the fact that the demand is illegal as already declared by it in the earlier case.

13. The rule which says that the Court may not enquire into belated and stale claim is not a rule of law but a rule of practice based on sound and proper exercise of discretion. Each case must depend upon its own facts. It will all depend on what the breach of the fundamental right and the remedy claimed are and how delay arose. The principle on which the relief to the party on the grounds of laches or delay is denied is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is a reasonable explanation for the delay. The real test to determine delay in such cases is that the petitioner should come to the writ court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not to physical running of time. Where the circumstances justifying the conduct exists, the illegality which is manifest cannot be sustained on the sole ground of laches. The decision in Tilokchand case relied on is distinguishable on the facts of the present case. The levy if based on the net profits of the railway undertaking was beyond the authority and the illegal nature of the same has been questioned though belatedly in the pending proceedings after the pronouncement of the High Court in the matter relating to the subsequent years. That being the case, the claim of the appellant cannot be turned down on the sole ground of delay. We are of the opinion that the High Court was wrong in dismissing the writ petition in limine and refusing to grant the relief sought for."

(emphasis supplied)

28. In *Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others*, the Court overruled the objection of delay in filing of a petition involving challenge to the seniority list of Mamlatdars and observed:

"10.....Moreover, it may be noticed that the claim for enforcement of the fundamental right of equal opportunity under Art. 16 is itself a fundamental right guaranteed under Art. 32 and this Court which has been assigned the role of a sentinel on the qui vive for protection of the fundamental rights cannot easily

allow itself to be persuaded to refuse relief solely on the jejune ground of laches, delay or the like."

29. In *Shankara Co-op Housing Society Ltd. Vs. M. Prabhakar and Others*, this Court considered the question whether the High Court should entertain petition filed under Article 226 of the Constitution after long delay and laid down the following principles:(SCC pp. 629-30, para 54)

"(1) There is no inviolable rule of law that whenever there is a delay, the Court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts.

(2) The principle on which the Court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because Court should not harm innocent parties if their rights had emerged by the delay on the part of the petitioners.

(3) The satisfactory way of explaining delay in making an application under Article 226 is for the petitioner to show that he had been seeking relief elsewhere in a manner provided by law. If he runs after a remedy not provided in the statute or the statutory rules, it is not desirable for the High Court to condone the delay. It is immaterial what the petitioner chooses to believe in regard to the remedy.

(4) No hard-and-fast rule, can be laid down in this regard. Every case shall have to be decided on its own facts.

(5) That representations would not be adequate explanation to take care of the delay."

28. From the aforesaid proposition, law emerges from the case of *Royal Orchid Hotels (supra)* is that where there is satisfactory explanation with regard to delay and a person continued to chase the remedy to secure justice then relief can not be denied by court.

29. Moreover, in the present case, not only petitioner had tried to secure justice from this Court but his writ petition was dismissed as infructuous with the Bunch of Writ petition, though it appears that inadvertently it was dismissed as infructuous. Accordingly, petitioner may not be deprived from his lawful right which seems to be available during the pendency of litigation.

30. Hon'ble Supreme Court in a case reported in *Dhananjay Sharma Vs. State of Haryana and Others*, had deprecated the commission and omission of the State Government and its authorities where the tendency has been developed to interfere with the administration of justice or due course of judicial proceedings. Since 1990 i.e. for about 23 years petitioner has not been given benefit of the amendment done in the control order (*supra*) which appears to be deliberate and

intentional.

31. The material on record reveals that there is rampant corruption in the licencing policy/system of the State Government. Either under the garb of renewal or grant of one time licence or for any other purpose "bribe seems to become custom", hence, it shall be appropriate for the State Government to utilize the Information Technology and proceed to grant licence by "online" mechanism which may not only for grant or renewal of licensee for different items but also to invite application for grant of fresh license with regard to kerosene oil, diesel, gas, food grains, fair price shop, liquor, mining etc.

32. This court while dealing with the corruption and involvement of anti social element in contracts in a case reported in 2006(24) LCD 1243, Chandrika Prasad Nishad Vs. State of U.P. and others had issued certain directions. For convenience the same is reproduced as under:-

"101. In view of above the present writ petition is allowed and decided in the following manner:-

(1) A writ in the nature of certiorari is issued quashing the impugned orders dated 15.7.2005 and 8.2.2005 as contained in Annexure 1 and 2 to the Writ petition No. 5018 (MS) of 2005 and impugned orders dated 13.7.2005 and 8.2.2005 as contained in Annexure-1 and 2 to the Writ Petition No. 5153 (MS) of 2005 with natural consequences. District Magistrate, Bahraich is directed to proceed afresh in accordance to law keeping in view the observations made in the present judgment to award mining contract or lease as the case may be.

(2) Since neither the State nor the Union of India had rebutted the finding of Pattanaik Committee (supra) and have also not come forward with a proposal to combat the organised crime, hence till effective law is legislated to check the organised crime keeping in view the observation made hereinabove, a writ in the nature of mandamus is issued commanding the opposite parties no. 1 to 4 as under:-

(i) Let recommendation of Pattanaik Committee relating to the grant of contract as reproduced in Para 30 of the present Judgment may be enforced forthwith. Apart from enforcement of recommendation of Pattanaik Committee as contained in para 30 of the present judgment, the State Government is further directed to issue appropriate Government Order or Circular providing that every contract or tender costing two lacs or more shall not be accepted by the department of State Government or its local bodies or corporations unless and until "no objection certificate" is provided by the Income Tax Department, Trade Tax Department, District Magistrate and Superintendent of Police of the District. No contract should be accepted unless the contractor furnishes a character certificate given by Superintendent of Police or Senior Superintendent of Police of the district concerned as well as District Magistrate of the district relating to antecedent of the contractor as well as financial capabilities to do the contractual work. Government may provide necessary format for that purpose.

(ii) Every government agreement must contain a clause to indicate that even after awarding of contract or lease of work by the Government or its local bodies or corporation, in case it comes to light that the person concern (contractor) has been actively associated with mafia or some unsocial elements or organised crime or is a Mafia or Mafioso then the contract or lease, so granted, shall be cancelled after serving a show cause notice.

(iii) The agreement of the contract should also contain enabling clause with power to rescind the contract or lease as the case may be in case it borne out from the record or it is proved that some of the prospective bidders were threatened or prevented from participating in the bid or they were prevented to submit their tenders then in such case, contract shall be cancelled and fresh assignment shall be given after inviting fresh tenders. As far as possible government shall ensure that physical presence of prospective bidders may not be made necessary. As observed by Pattanaik Committee tenders or bids may be given by Email, registered post or other electronic mode.

(iv) In case prospective bidder or contractor submits a complaint stating that he or she has been threatened with dire consequences in case he or she participates in a bid or submit tender, then the Head of the District Police or the State Government shall immediately provide appropriate security to such person for reasonable period and shall register an FIR for investigation in accordance to law.

(v) Since the movement of armed personnel collectively alongwith the persons holding whatsoever post, office or designation, creates fear psychosis in public as discussed hereinabove, the State Government is directed to ensure that those who used to move with private armed personnel should not be given official or police security. Such persons shall not be entitled to claim police security from the State Government. Similarly, those persons who form an assembly or move collectively alongwith persons having police security shall not be entitled to possess armed licence and District Magistrate of the District concerned will have right to cancel their fire arm licenses. The State Government may issue appropriate order or circular accordingly. It is necessary also because as held hereinabove "right to live a dignified fearless life" is a fundamental right guaranteed under Article 21 of the Constitution of India.

(vi) The State Government is directed to constitute or establish an Organised Crime Control Authority in the State of U.P. headed by an officer not below the rank of Principal Secretary with minimum two other members namely Additional Director General of Police (Law and Order) and Additional Director General of Police (Mafia) empowering it to receive complaint and make investigation or to investigate the charges relating to government contracts, lease or agreement where the involvement and malpractices of mafia or organised criminal is suspected. In every district of the State a committee should be constituted to hold an enquiry relating to the involvement of mafia in the contracts relating to government, its local bodies and corporations. Appropriate regulatory rules or guidelines may be framed by the State Government forthwith and government

order may be issued accordingly.

(vii) Since, admittedly, no information is being collected and retained in the office of Director General of Police or Inspector General of Police (Crime) relating to the organised crime and its member, as well as White Collar Criminals, the State of U.P. is directed to link the office of Director General of Police with computer network (in case already not done) and an officer of the rank of Additional Director General of Police may be deputed to deal with organised crime, Mafia and white collar criminals as separate wing. All Superintendent of Police of the State of U.P. are directed to collect necessary information relating to the organised crime and the names of persons involved in such crime and forward the same to Additional Director General of Police appointed to deal with organised crime. Station House Officer of respective Police Station in the State of U.P. shall collect the necessary information relating to the organised criminals of their jurisdiction and shall forward the same to the Superintendent of Police who in turn shall forward the same to the Additional Director General of Police (Mafia or organised crime). The information so collected shall be used to check organised crime. The State of U.P. is directed to provide necessary fund for establishment of computer network in the Police Department managed by skill hand expeditiously. All necessary information relating to the various crimes referred in the present judgment or otherwise should be collected by creating various heads in a prescribed format by the police department. The information shall include not only the criminal activities of organised gang or Mafia but also the detail of their assets and properties and associates of mafia, telephone numbers, address, their modus operandi etc. While collecting such data the various circumstances and nature of the crime enumerated in RICO Act referred in present judgment may be taken into consideration. For this Intelligence Network may be given necessary strength by the Government of U.P.

Appropriate steps may be taken so that citizen may lodge First Information Report through email/fax or other electronic modes.

(viii) The incident of every kidnapping for ransom and organised crime should be recorded in the service book of Station House Officer of the area concerned by the Superintendent of Police of the respective districts. In case, any Station House Officer fails to check the reoccurrence of kidnapping for ransom or organised crime then he or she shall be liable for removal from the said post. Every incident of kidnapping for ransom should be recorded in the service book of Station House Officer of the Police Stations by the Senior Superintendent of Police/Superintendent of the Police of the District concerned and for that purpose appropriate column should be provided in the service book.

(ix) The State Government as well as Union of India is further directed to take special care not to permit an Advocate registered with the State Bar Council to indulge into contract works. Any application moved by an Advocate for mining lease or contract work to any department of the State, its local bodies or corporation should be outrightly rejected.

Even if after the awarding of contract it borne out from the record and comes into the knowledge of the competent authority that contract has been awarded to an Advocate then such contract or assignment should be immediately cancelled. Advocate Act does not permit an Advocate to enter into any other business or trade or service being a privileged profession. Let the Union of India as well as the State of U.P. issue a circular accordingly.

(x) Union of India and Railways are directed to take appropriate steps expeditiously to check the involvement of Mafia or Mafioso or members of organised criminals gang, in Railway contract as well as other Government contracts and local bodies, corporations including National Highway and other establishments keeping in view the finding recorded by the Pattanaik Committee and observation made in the present judgment.

Since, interference by Mafia or members of Organised Crime has been noticed by Pattanaik Committee in the railways contracts and to some extent in the contracts of national highway and other central government organizations and are rising with alarming rate it shall be appropriate that Government of India may constitute Organised Crime Control Authority with ample power to rescind the contract in case it has been awarded to the member of organised gang of criminal or mafia. The Government of India and Railways are further directed to take appropriate steps expeditiously to use information technology and technical knowledge so that physical presence of the contractors may not necessary to raise bids and the contract awarded to Mafia or members of organised criminal gang may be cancelled.

(xi) The Union of India is further directed to take appropriate measures and steps expeditiously in the light of observation made in the present judgment to check the involvement of mafia in the government contracts, lease or permits.

It shall be appropriate that Union of India may take suitable steps either by making a reference to the Law Commission or by directing the Law Department to prepare a draft to enact an Act on the pattern of RICO Act existing in the United State of America to check and control the organised crime in the country. The Union of India shall forward the copy of present judgment as well as copy of report of Pattanaik Committee to the Central Law Commission.

(xii) Keeping in view the statement made by Chief Minister of the State and the statement given by Advocate General of the State of U.P. referred hereinabove in the present judgment the State of U.P. is directed to make a reference to the State Law Commission to submit a recommendation to State Government within specified time for enactment of an Act keeping in view the observation made in the present judgment and RICO Act or MOCC Act (Maharashtra Organised Crime Control Act) to check the organised crime or activities of mafia in the State of U.P.. After receipt of recommendation from Law Commission of the State, the State Government is directed to proceed ahead to legislate an Act to check the organised crime in the State of U.P. While making a reference to the State Law

Commission the State Government shall forward the copy of the present judgment as well as the report of Pattanaik committee.

The aforementioned directions issued by this court are not final and have been issued to meet out the immediate requirement in public interest, as the State has not come forward with a proposal to combat organised crime. It shall be open to the State Government as well as Union of India to legislate Law or frame Rules or issue appropriate Government Order or circular keeping in view the observation made in the present judgment expeditiously in public interest as well as to combat the rise of organised crime."

33. State Government had issued government orders in pursuance to aforesaid direction dated 2.11.2006 and made a statement that it shall be complied with. The government order issued by State Government is on record in the Special Appeal No. 965 of 2006, State of U.P. Vs. Chandrika Prasad Nishad. We also reiterate the aforesaid directions issued in the case of Chandrika Prasad Nishad (supra).

34. In view of above, it is obligatory on the part of State Government, not only in contractual matter but also while dealing with licensing policy, that the information technology should be applied and applications for grant and renewal of licence should be invited and renewed "online". It will not only reduce the corruption but also it shall leave little scope to deviate from terms and conditions provided for the purpose. It should be further appropriate for the government to display all the government orders dealing with variety of subjects relating to public interest online so that public may know their rights and liabilities while dealing with particular subject.

35. Petitioner seems to be entitled for grant of licence in view of amended government order dated 19.4.1994 as contained in Annexure-7 to the writ petition which cannot be taken away by any order issued at later stage.

36. H.G. Wells in his famous treatise, "A Short History of the World", at page 161 has discussed the plight of people in latter part of Roman Civilization, as under:-

"...There was little of what we should call family life, few homes of temperate living and active thought and study, schools and colleges were few and far between. The free will and the free mind were nowhere to be found. The great roads, the ruins of splendid buildings, the tradition of law and power it left for the astonishment of succeeding generations must not conceal from us that all its outer splendour was built upon thwarted wills, stifled intelligence, and crippled and perverted desires. And even the minority who lorded it over that wide realm of subjugation and of restraint and forced labour were uneasy and unhappy in their souls; art and literature, science and philosophy, which are the fruits of free and happy minds, waned in that atmosphere. There was much copying and imitation, an abundance of artistic artificers, much slavish pedantry among the servile men of learning, but the whole Roman empire in four centuries produced nothing to set beside the bold and noble intellectual activities of the

comparatively little city of Athens during its one century of greatness. Athens decayed under the Roman scepter. The science of Alexandria decayed. The spirit of man, it seemed, was decaying in those days."

35% of peoples including professionals like doctors, engineers, teachers, were slaves in that era. It is the cry and plight of those peoples resulted into the dooms" day of Roman Civilization.

37. Kautilya in his "Economics" says that Government servants could enrich themselves improperly in two ways viz., either by cheating the Government or by exploiting the public. He says that misbehaviour by the Government servants with public leads to reduction in revenue. On one hand, Kautilya opined for the severe punishment to the Government servants in the event of misconduct or encourage them to confess but on the other hand, he emphasized to protect the Government servants against false accusation. Interest of public was protected by providing for compensation to the malpractices. ("Arthshashtra of Kautilya" by L.N. Rang Rajan: page 294).

38. With regard to elimination of antisocial elements Kautilya categorise them into thirteen types. Shri L.N. Rangrajan in his commentary on Kautilya Arthshastra at page 221 discussed the kautilya view point as under:-

"(iv) Eliminating anti-social persons:-

There are thirteen types of undesirable persons who amass wealth secretly be causing injury to the population. [These are: corrupt judges and magistrate, heads of villages or departments who extort money from the public, perjurers and procurers of perjury, those who practice witchcraft, black magic or sorcery, poisoners, narcotic dealers, counterfeiters and adulterators of precious metals.] When they are exposed by secret agents, they shall either be exiled or made to pay adequate compensation proportionate to the gravity of the offence."

Thus in today's context kautilya had deprecated the corruption amongst Judges, Magistrate as well as government employees and recommended for their severe punishment.

39. Kautilya further opined that any official who incurs the displeasure of people should either be removed from his post or transferred to a dangerous regions (supra). According to Kautilya the government servant could enrich themselves improperly in two ways viz. either by cheating the government or by exploiting the public.

What the Kautilya has said long back i.e. in 321 BC seems to be still relevant to tone up the governance system of the Indian democracy.

40. In the case of Dhananjay Sharma (supra) while emphasizing to protect the honest officers Hon"ble Supreme Court had shown deep concern to the mal-administration prevailing in the country to quote:-

"It is in common knowledge that in recent times our administrative system is

passing through a most critical phase, particularly, the policing system which is not as effective as it ought to be and unless some practical correctional steps and measures are taken without further delay, the danger looms large when the whole orderly society may be in jeopardy. It would, indeed, be a sad day if the general public starts entertaining an impression that the police force does not exist for the protection of society's benefits but it operates mainly for its own benefit and once such an impression comes to prevail, it would lead to disastrous consequences."

41. In one another case reported *Niranjan Hemchandra Sashittal and Another Vs. State of Maharashtra*, Hon"ble Supreme Court held to quote:-

"It can be stated without any fear of contradiction that corruption is not to be judged by degree, for corruption mothers disorder, destroys societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the glory of the institutions, paralyses the economic health of a country, corrodes the sense of civility and mars the marrows of governance. It is worth noting that immoral acquisition of wealth destroys the energy of the people believing in honesty, and history records with agony how they have suffered. The only redeeming fact is that collective sensibility respects such suffering as it is in consonance with the constitutional morality."

42. Supreme Court further emphasis that a tendency has been developed to abuse the official position resulting in epidemic corruption in the governance, to quote:-

"It can be stated with absolute assurance that the tendency to abuse the official position has spread like an epidemic and has shown its propensity making the collective to believe that unless bribe is given, the work may not be done. To put it differently, giving bribe, whether in cash or in kind, may become the "mantra" of the people."

43. These observations are based on the basis of several judgments and orders of High Court, Apex Court of the country and newspaper reports.

44. The basic foundation of rule of law in a civilized society is Un-corrupt system of governance which includes judicial pronouncement. A corrupt system of governance ultimately culminate into disorderly society with disastrous consequences. In such situation, the "might is right" prevails and law binding citizens are most sufferer. In such situation, for public good nature takes care to uphold the truth by violent revolutions which may be noticed across the board through out world. Once a system cracks or breaks because of corruption on the part of government employees including judiciary then it is not easy to restore order in a society.

45. Rule of law is not an empty formality but it is a conscious positive action with the element of constitutionalism to serve the people. It is the prime duty of government to check the maladministration and proceed immediately in the

event of misconduct committed by any officer/employees. Inaction on the part of government to deal with ailing employees may create chaos in the society.

46. T.R.S. Allan in his celebrated book *Law, Liberty and Justice: The Legal Foundations of British Constitutionalism* (Oxford: Oxford Univ. Press 1993) p. 21-22 while considering the rule of law and its basic requirement observed to quote:-

The terms "rule of law" seems to mean primarily a corpus of basic principles and values, which together lend some stability and coherence to the legal order.....The rule of law is an amalgam of standards, expectations, and aspirations it encompasses traditional ideas about individual liberty and natural justice, and, more generally, ideas about the requirements of justice and fairness in the relations between government and governed. Nor can substantive and procedural fairness be easily distinguished: each is premised on respect for the dignity of the individual person..

The idea of the rule of law is also inextricably linked with certain basic institutional arrangements. The fundamental notion of equality, which lies close to the heart of our convictions about justice and fairness, demands an equal voice for all adult citizens in the legislative process; universal suffrage may today be taken to be a central strand of the rule of law."

47. In case Allan's view is considered with regard to stability and coherence to the legal order coupled with standards, expectations, and aspirations of the people it means an un-corrupt administrative system where statutory and constitutional right of the citizen are made available by the government without any of the under hand payment or bribe but experience shows that ordinarily our licencing system works only in case some under hand dealing is struck off.

48. Though Manu Smriti seems to be distorted at later stage and contained certain offending portion but a close scrutiny shows that its substantial contents are still relevant (Morality in law page 45). According to Manu, an individual is kept under control by the fear of punishment, to quote certain shaloks from Manusmirit:-

An individual is kept under control by the fear of punishment. There is hardly any man in this World who is guiltless. It is only through the fear of punishment, the people yield to the rule of law. [VII-22]

If the king fails in his duty to use the power of the State to punish the guilty, individuals with evil propensities would cross all barriers of law and cause injury to others and as a result, the people at large would suffer. [VII-24]

The power of punishment cannot be exercised by persons who are not well experienced and knowledgeable. It can be imposed only by those who know Dharma fully. Any improper use of power of punishment is sure to destroy the King [State] himself. [VII-28]

49. The aforesaid observation are based on thousand years of experience of the Indian Civilization. Without fear of punishment the authority of antisocial elements cannot be circumvented. Punishment must be awarded by persons who have experience and knowledge in the field having impeccable character. In case, system fails to punish guilty the individuals with evil propensities would cross all barriers of law and shall cause injury to others resulting in peoples suffering.

Manu further says:-

Punishment alone regulates the conduct of all created beings. Punishment alone protects the people. The power of punishment of the State is the real protector of individuals throughout the day and night.[VII-18]

If the King fails to punish all those who deserve to be punished, the stronger would roast the weaker and as a result, the weaker section of the society would suffer. [VII-20]

50. The magnitude of corruption from which India is suffering seems because of the lack of substantial number of persons holding constitutional and other high offices in the government including judiciary.

51. Geeta says "whatever great man does the same is done by others as well" (Chapter III verse 21). Here "great man" means leaders of the society which includes constitutional functionaries, bureaucrats and persons of judicial fraternity. Since, the substantial number of persons across board of all three wings of the system seems to be not up to mark in the public eyes, corruption in one or other form has came down to bottom of the governance.

52. Time has come when "long and short terms policy" should be framed by the Government to weed out the corrupts or persons whose integrity is not up to mark. Long terms policy includes reformation in education system based on values from beginning of the academic carrier. The "other" means includes "screening at entry level" by making electoral reform as well as providing procedure with regard to appointment in bureaucracy as well judiciary. "Regular monitoring" is required of all persons who are working in all three wings of the Government with regard to their property, personal character and functioning. "Weeding out procedure" should be continuous process so that in case, there are substantial material to indict a person working in any field then services of the such persons should be dispensed with followed by trial and punishment.

53. Keeping in view the factual matrix on record and allegations with regard to involvement of corrupt practice in passing of the impugned order and alleged under hand dealing it shall be appropriate that Director of the Vigilance may be directed to constitute a Special Investigation Team. The team shall investigate and in case any material is detected then shall proceed to lodge FIR and prosecute the offenders. Petitioner shall provide all available material to the investigating officer.

54. It is a fit case where in view of law settled by Hon''ble Supreme Court

exemplary cost should be awarded vide Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), , Rameshwari Devi and Others Vs. Nirmala Devi and Others, A. Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam Represented by Its President etc., Keeping in view the seriousness of allegations pleaded in the writ petition matter requires to be referred for investigation by appropriate agency like Vigilance Department. The writ petition deserves to be allowed.

ORDER

[A]. Accordingly, the writ petition is allowed with costs. A writ in the nature of certiorari is issued quashing the impugned order dated 28.4.2012 passed by the Licensing Authority as contained in Annexure-1 to the writ petition with all consequential benefits.

[B]. A writ in the nature of mandamus is issued commanding the respondents to consider a fresh for grant of license in the light of judgment and order dated 10.2.2012 passed in writ Petition No. 1668 of 2011 read with amended control order dated 19.4.1994 as contained in Annexure-7 to the writ petition, ignoring all other government order circular issued at later stage expeditiously say within a period of two months.

[C]. Further a writ order or direction in the nature of mandamus is issued to the State Government to provide mechanism for online registration, renewal and grant of licenses to the licensee by State not only for kerosene oil but also other items under different statutes and govt. orders.

[D] Keeping in view the allegation on record as contained in Writ petition as well as typed copy of conversation on the mobile phone as contained in Annexure-18 to the writ petition the Director of Vigilance, is directed to constitute a Special Investigation Team to investigate and matter to record statement followed by lodging of FIR and prosecution in case offence is made out in appropriate court. Director Vigilance shall report to this court at the interval of every two months.

[E]. Costs quantifying to Rs. 2,00,000/- (Two lacs) shall be deposited by the respondents in this Court within a period of two months and the petitioner shall be entitled to withdraw an amount of Rs. 1,50,000/-(one lac fifty thousands). Rest of the amount shall be referred to the Mediation and Conciliation Center, Lucknow. In case, cost is not deposited it shall be recovered as arrears of land revenue, registry shall take follow up action.

Judgment delivered under Chapter VII Rule 2 of the Allahabad High Court Rules today.