

(2011) 02 BOM CK 0023
In the Bombay High Court
Case No : Writ Petition No. 4649 of 2009

Sanjay Surwase

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 09-02-2011

Acts Referred:

Essential Commodities Act, 1955 — Section 3

Citation : (2011) 2 ALLMR 545 : (2011) 5 BomCR 397 : (2011) 3 MhLj 826

Hon'ble Judges : R.M. Borde, J;D.B. Bhosale, J

Bench : Division Bench

Advocate : N.P. Patil Jamalpurkar, in Writ Petition Nos. 7299/2008, 2063, 2648 and 4649/2009 and V.D. Salunke, in Writ Petition Nos. 5749 and 5750/2009, for the Appellant; K.B. Choudhari and D.R. Kale, AGPs for R.1 to 5, V.D. Salunke, in Writ Petition Nos. 7299/2008, 2063, 2648 and 4649/2009, K.B. Choudhari and D.R. Kale, AGPs for R.1 to 3 and N.P. Patil Jamalpurkar, for R.4. in Writ Petition Nos. 5749 and 5750/2009, for the Respondent

Judgement

R.M. Borde, J.—Rule. Rule made returnable forthwith. By consent of learned Counsel for the parties, all the petitions are heard finally at admission stage.

2. For the sake of convenience, we divide these six Petitions into two groups. The first being of the first four Petitions and the second of the remaining two Petitions. The Petitions in the first group basically take exception to the orders passed by Minister for Food, Civil Supply and Consumer Protection, Government of Maharashtra (for short "the Minister"), whereby kerosene dealers licenses issued in 1999 to Respondent Nos. 6 in this group of Petitions have been renewed by the Minister vide orders dated 19/10/2007, 19/11/2008, 3/3/2009 (for short, "impugned orders") passed in revision applications filed by these Respondents.

3. The licenses of the Petitioners in the second group of petitions were also renewed by the Minister vide order dated 19/10/2007, in the very same revision that was filed by them alongwith the Petitioners in the first two Writ Petitions.

4. Respondent Nos. 6 in the first group of Writ Petitions and the Petitioners in the second group of Petitions will be hereinafter referred to as "the Applicants" i.e. by their status in the revision applications filed by them before the Minister. Similarly, the Petitioners in the first group of Petitions and Respondent Nos. 4 in the second group of Petitions were the opponents in the revision applications filed by the applicants, and hence they will be referred to as "the Opponents" for the sake of convenience.

5. By the impugned orders, the Minister has allowed the revision applications filed by the Applicants, setting aside the orders passed by District Supply Officer, whereby, their applications for renewal of the licenses, which were issued in 1999, were rejected. The licenses were issued to the Applicants initially for a period of 5 years and that period admittedly expired on 31st December 2003. The Applicants applied for renewal of their licenses for the first time in 2005 before the District Supply Officer. While entertaining their applications for renewal at belated stage, the Minister in the impugned orders, made reference to Government Resolution No. Kerosene1902/4296/PK 2610/M.P.27 dated 10/8/2004. As provided for in this Resolution, the deposit made by the Applicants in 1999, at the time of issuance of licenses, was directed to be forfeited. The Applicants were also directed to pay late fee and fresh deposit at the prevailing rate, as provided for in the said Resolution. Accordingly, the Minister directed to renew the licenses of all the Applicants for a further period of 5 years. In the revision applications before the Minister, 18 kerosene dealers including the Opponents from Taluka Ausa, sought intervention and their applications were allowed and they were heard by the Minister. Out of the 18 kerosene dealers, only the Opponents carried the orders passed by the Minister in the first group of Writ Petitions.

6. The Petitions in the second group are directed against the orders passed by Tahsildar, Ausa, both dated 10/8/2009, whereby kerosene quota that was allotted to these Applicants after the orders of the Minister, has been withdrawn and added to the quota of the Opponents in these Petitions. From perusal of the order dated 10/8/2009, it appears, the Tahsildar has passed this order in pursuance of the interim order passed by this Court in Writ Petition No. 4649/2009. If further appears that the orders of the Minister in favour of the Applicants in these two Petitions have not been carried further and hence they claim that the orders of the Minister in their favour attained finality.

7. It is against this backdrop, we have heard learned Counsel for the parties at considerable length. The questions raised and the arguments advanced by learned Counsel for the parties in all the Writ Petitions are common, hence all the Petitions are being disposed of by this judgment.

8. The opponents in these Petitions are kerosene dealers since 1994/95 and they have been operating in their respective villages in Taluka Ausa, District Latur. On 14/6/1999, the Government issued a Resolution being Government Resolution No. Kerosene2199/2000/PK 112/NP27 (for short, "the G.R. of 1999"), whereby it

was decided to issue kerosene dealers licenses in rural and urban areas in the State, in the ratio of 1 license for the population of 400 in rural area and 1 license for the population of 500 in urban area. There is no dispute that the applicants were granted kerosene dealers license in 1999 for a period of 5 years pursuant to the G.R. of 1999. Issuance of the licenses in pursuance of the G.R. of 1999 was challenged by the then existing license holders in Writ Petitions including Writ Petition No. 5600/99. This Court vide order dated 14/6/1999 stayed the G.R. of 1999 and as a result thereof, as stated by Respondent Nos. 1 to 5 on affidavit, kerosene quota was not released in favour of the applicants. The Government thereafter, issued another resolution dated 11/4/2000 being Government Resolution No. Kerosene2100/2020/PK 112/NP27 (for short, "the G.R. of 2000"), whereby the G.R. of 1999 was substantially modified.

9. After the G.R. of 1999 was issued, about 21 licenses were issued in pursuance thereof to fair price shop owners in Ausa Taluka, including the Applicants in these Petitions. However, kerosene quota was not released in favour of these licensees in view of the order of stay granted by this Court in Writ Petition No. 5600/1999. The Applicants and other similarly placed persons, therefore, filed Civil Application No. 1840/2006 in Writ Petition No. 5600/1999 and prayed for modification of the interim order. The said Application was dismissed by this Court. The Applicants thereafter, applied to the District Supply Officer for renewal of their licenses some time in May 2005. The District Supply Officer rejected their applications vide order dated 15/6/2005 mainly on the ground of delay and also in view of the order of stay granted by this Court in Writ Petition No. 5600/1999. The orders passed by District Supply Officer were carried by the Applicants in 3 different Revision Applications before the Minister. The Revision Applications, filed by the Applicants were allowed by the Minister by the orders impugned in the first group of Petitions. Insofar as the order of the Minister in favour of the Petitioners in the second group of Writ Petitions remained unchallenged.

10. The Minister allowed the revision applications and directed to renew kerosene dealers licenses issued in 1999 pursuant to the G.R. of 1999 for the first time in 200809. In view of renewal of the licenses by order of the Minister, kerosene quota of the Opponents came to be substantially reduced and hence they approached this Court by way of the Petitions in the first group. Insofar as the Petitions in the second group are concerned, the Applicants i.e. Petitioners therein challenged the orders of the Tahsildar, whereby quota of kerosene allotted to them in pursuance of the order of renewal was withdrawn and added to the kerosene quota of the Opponents i.e. Respondent Nos. 4 in those 2 Writ Petitions.

11. We have heard learned Counsel for the parties and with their assistance, perused the entire material placed before the Court. Mr. PatilJamalpurkar, learned Counsel for the Opponents, after taking us through the G.R. of 1999 and the G.R. of 2000, submitted that the Minister committed grave error of law in allowing the applications, seeking renewal of the licenses, which were issued

pursuant to the G.R. of 1999 after the said G.R. was substantially modified or stood withdrawn vide the G.R. of 2000. He submitted that it was wrong and illegal on the part of the Minister in allowing the revision applications and issuing directions to renew the licenses after the G.R. of 2000 was issued. He further submitted that in any case, the Minister ought not to have allowed the revision applications since the applicants did not show sufficient reason/cause for approaching the concerned authority for renewal of their licenses belatedly. In short, he submitted that the revision applications were entertained by the Minister without there being any application for condonation of delay or prayer for condonation of delay in the revision application itself for seeking renewal of their licenses belatedly. He then submitted that the Minister wrongly relied upon the G.R. dated 10/8/2004 for allowing the renewal applications belatedly. The reliance on this Resolution placed by the Minister, Mr. Patil submitted, was misplaced.

12. Mr. Salunke, learned Counsel for the Applicants, on the other hand submitted that the Opponents have no locus standi to challenge the orders passed in the revision applications inasmuch as they are not affected/aggrieved by the orders of the Minister. He further submitted that though the G.R. of 1999 was withdrawn by issuing the G.R. of 2000, the policy to issue licenses to women was continued and therefore, renewal of the licenses in favour of the Applicants i.e. Respondent Nos. 6 in Writ Petition No. 4649/2009, who is a woman, cannot be faulted. Mr. Salunke further submitted that merely because the G.R. of 1999 was withdrawn, it would not lead to an inference that the licenses issued pursuant to the said G.R. stood cancelled. In the course of arguments, we made a query to Mr. Salunke as to whether the applicants, alongwith their applications seeking renewal of the licenses, had filed independent applications for condonation of delay or prayed for condonation of delay caused in making applications for renewal in the applications/revisions. He could not answer the query either in the affirmative or in the negative, neither he could produce copy of any such application or even of the revision application before us. Mr. Salunke in the beginning of his arguments also raised a preliminary objection contending that the first group of Writ Petitions pertain to Single Judge and therefore, those Petitions may be placed before the appropriate bench. He submitted that so far as the Petitions in the second group are concerned, they pertain to Division Bench and they can be heard by this Court. Mr. Salunke then, insofar as the Petitions in the second group are concerned, submitted that the orders passed by the Minister in favour of those Petitioners were not challenged by way of Writ Petitions and therefore, they attained finality. He submitted that the order of the Tahsildar withdrawing the quota of kerosene from these Applicants, was wrong and illegal solely on the basis of the order of stay granted by this Court in Writ Petition No. 4649/09. He submitted that the order of stay granted in this Writ Petition was qua the Applicants i.e. Respondent No. 6 in the said Writ Petition and therefore, the order of Tahsildar impugned in these Petitions are wrong and illegal.

13. Writ Petition No. 7299/08 was the first Petition filed by the Opponents challenging the order of Minister. This Court vide order dated 24/2/2009, while issuing Rule, granted interim stay in terms of prayer clause "B1". Thereafter, Writ Petition No. 4699/09 was filed and ad interim order in terms of prayer clause "C" therein was granted. Then from the orders passed thereafter, it appears that all the six Petitions were clubbed and placed before the Court from time to time. Neither Mr. Salunke nor any other Advocate on behalf of the Applicants at any point of time raised objections for either clubbing these Writ Petitions with Writ Petition Nos. 5749/09 and 5750/09 or for hearing them together. There is no dispute that Writ Petition Nos. 5749/09 and 5750/09 pertain to Division Bench. In view thereof, the first submission of Mr. Salunke that the Petitions in the first group of Writ Petitions should be placed before Single Judge, is devoid of any merit and deserves to be rejected outright.

14. We have perused the G. Rs. of 1999 and 2000. It appears that the G.R. of 2000 was issued in view of the representations made by the then existing kerosene dealers" license holders stating that in view of the licenses issued in pursuance of the G.R. of 1999, their kerosene quota was likely to be substantially reduced and thereby, they would suffer financial loss and as a result thereof, they would not be able to maintain their families. It is against this backdrop, the G.R. of 2000 was issued and the benefits extended under the G.R. of 1999 were withdrawn. This apprehension stands proved in view of the orders passed by the Tahsildar which are impugned in the second group of Writ Petitions. These orders show that in fact kerosene quota of the objectors was reduced. In view thereof, it cannot be stated that the objectors have no locus and that their rights were not affected by the impugned orders, whereby the applications for renewal made by the applicants were allowed. That apart, the objectors were added as Respondents in the revision application itself and they were heard by the Minister . Therefore, they cannot be stated to have no locus in filing the petitions challenging the orders passed by the Minister in revision applications.

15. The policy to issue licenses to women need not be considered in these Writ Petitions. The challenge in the Writ Petitions is to the order of renewal of licenses which were issued pursuant to the G.R. of 1999, which was withdrawn by the G.R. of 2000. Therefore, merely because the policy to issues license to women was continued even in the G.R. of 2000, does not mean that the applicants are entitled for renewal of their licenses which were issued on the basis of the withdrawn G.R. of 1999. Moreover, out of the six applicants in these petitions, only one applicant is a woman, which fact cannot be overlooked.

16. We do not find any substance in the submission of Mr. Salunke that merely because the G.R. of 1999 was withdrawn, that does not lead to an inference that the licenses issued in pursuance thereof stood cancelled. The question involved in these Writ Petitions, in our opinion, is whether renewal of the license was correct and not cancellation of the licenses. Though we cannot concede to the submission of Mr. Salunke, the propriety demands that the Minister ought not

have renewed the licenses which were issued pursuant to the G.R. of 1999 since the said G.R. stood withdrawn/modified substantially by the G.R. of 2000. In other words, the order of renewal cannot be sustained in law, since the source of issuing the licenses i.e. the G.R. of 1999 to the applicants in 1999 itself did not exist in view of the subsequent G.R. of 2000. The test is whether fresh license could be issued pursuant to the G.R. of 1999, after the G.R. of 2000 was issued. Since in our opinion, answer to this question is in the negative, the impugned orders of renewal passed in 2008/2009 are also wrong and illegal and deserve to be set aside.

17. The Maharashtra Kerosene Dealers Licensing Order 1966 (for short "the Order") was issued on 22/6/1966 in exercise of the powers conferred by Clause (c) (d) (i) (ii) and (j) of subSection 2 of Section 3 of the Essential Commodities Act, 1955. Clause 7 of the Order provides for period of license. Subclause (1) states that every license granted under the Order shall be valid for a period of 5 years from the date of issue of the license and shall be renewed for a further period of 5 years, at a time, thereafter, provided that, no license shall be granted for any period beyond the 31st December of the 4th year next following the year in which the license is granted. In the present case, the licenses issued, pursuant to the G.R. of 1999, were admittedly valid till 31st December 2003. Sub clause [1A] of Clause 7 provides that application for renewal of the license shall be accepted before the date of expiry of his license provided that where application for renewal is made before the 31st of January of the following year after the expiry of the validity of the license, the application shall be accepted by the concerned authority. It further provides that no application for the renewal of a license shall thereafter be entertained by the licensing authority, unless the said authority is satisfied that the application for renewal could not be made in time, for valid and sufficient reason.

18. It is thus, clear that the power is vested in the concerned authority to entertain applications for renewal of a license even after the prescribed period, provided valid and sufficient cause is shown by the applicant for approaching belatedly. If there is a delay in making application for renewal of the license, the application, in our opinion, should either accompany a separate application for condonation of delay or atleast sufficient cause for condonation of delay should be shown in the application for renewal itself. Apart from that, the concerned authority is obliged to record valid and sufficient reason for allowing the application for renewal belatedly. If no valid and sufficient cause is shown and the reasons are recorded in the order, allowing the renewal belatedly, such order, in our opinion, cannot be sustained in law.

19. In the present case, admittedly, kerosene dealers licenses had expired on 31st December 2003 and the applications for renewal were made for the first time in May 2005. The District Supply Officer rejected those applications in January 2006 on the ground of delay and in view of the order of stay granted by this Court in Writ Petition No. 5600/99. Against these orders, revision

applications were filed before the Minister for Food, Civil Supply and Consumer Protection. From the orders passed in the revision applications, we do not find any valid or sufficient reason for condoning the delay in approaching for renewal belatedly. The only reference that we find, as pointed by learned Counsel for the parties, is in paragraph No. 8 of the order dated 19/11/2008 passed in the revision application filed by the applicants. It is observed in this paragraph that the licenses to these persons were issued before the order of stay granted by High Court and in view thereof, though the applications for renewal are filed belatedly, they are liable to be granted in view of the G.R. dated 10/8/2004, by imposing late fee and by forfeiting the deposit made by them at the time of issuance of the licenses in 1999 with further direction to pay fresh deposit. Accordingly, the licenses were renewed w.e.f. 1/1/2004 by order dated 19/11/2008.

20. We have perused the G.R. dated 10/8/2004. This G.R. does not confer any power to condone the delay. It only empowers the authority to take late fee and to forfeit the deposit paid at the time of issuing the License for entertaining application for its renewal belatedly, and further to direct to pay fresh deposit prevailing at the time of renewal. It is only subClause (1A) (b) of Clause 7 of the Order empowers the concerned authority to entertain application for renewal of a license after the time stipulated therein, where the said authority is satisfied that the application for the renewal could not be made in time, for valid and sufficient reasons and that the satisfaction is recorded in the order of renewal.

21. In the present case, no separate application showing sufficient cause for filing application belatedly was either filed or such cause was shown in the application before the District Supply Officer or in the revision application filed before the Minister. We asked for copy of the revision and/or application for condonation of delay. Mr. Salunke, learned Counsel for the applicant could not place it on record. We also allowed him to produce copy of the revision application and/or the application for condonation of delay for our perusal the next day, however, he did not do so. Moreover, it is pertinent to note that the applicants in the revision applications had no sufficient reason or cause to file applications for renewal of their licenses for the first time in May 2005. That apart, we fail to understand as to how the revisional authority could entertain such applications and renew the licenses which were issued on the basis of the G.R. of 1999 which was withdrawn/ substantially modified by the G.R. of 2000 and that too without recording any valid or sufficient reason for entertaining the applications at belated stage. Hence, in our opinion, the orders passed by the revisional authority, which are subject matter of these proceedings, deserve to be set aside.

22. As we find that the order of the Minister dated 19/11/2008 suffers from infirmities, in our opinion, renewal of the licenses of the applicants i.e. the Petitioners in the second group of Petitions on the basis thereof was wrong and illegal and therefore, we do not see any valid reason to set aside the orders of

the Tahsildar dated 10/8/2009 impugned in these Petitions. We have examined the legality of the (common) order dated 19/11/2008 which is the subject matter in the first two Writ Petitions from the first group of Petitions. Therefore, we are not inclined to grant any relief in favour of the applicants in the second group of Petitions, merely because the order dated 19/11/2008 in their favour, was not challenged. In other words, since the basic order dated 19/11/2008 is set aside being illegal, we are not inclined to entertain the challenge in these Petitions.

23. In these circumstances, we allow the Writ Petitions in the first group, setting aside the orders passed by the Minister dated 19/11/2008 which is challenged in Writ Petition No. 4649/2009 and Writ Petition No. 7299/2008 and the orders dated 3/3/2009 and 19/10/2007 which are subject matter of Writ Petition Nos. 2063/2009 and 2648/2009 and dismiss the petitions in the second group of Writ Petitions. Rule is disposed of in terms of this judgment with no order as to costs.

24. This order however, shall not preclude the applicants from approaching the concerned authority afresh for seeking kerosene dealer's licenses. If they make any such applications, same may be considered on merits in accordance with law.