

(1994) 12 OHC CK 0010
In the Orissa High Court
Case No : O.J.C. No. 4200 of 1994

Sarala Distributors

APPELLANT

Vs

Collector and Others

RESPONDENT

Date of Decision : 07-12-1994

Acts Referred:

Orissa Kerosene Control Order, 1962 — Rule 10, 11

Citation : (1995) 2 OLR 290

Hon'ble Judges : P.C. Misra, J;A.K. Padhi, J

Bench : Division Bench

Advocate : A.R. Dash, N. Lenka and N. Das, for the Appellant; Md. Kamal Hussain and Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

P.C. Misra, J.—The petitioner in this writ application has been working as a Sub-wholesale dealer in Kerosene Oil being duly appointed by the licensing authority under the Orissa Kerosene Control Order, 1962. He has prayed for quashing the order of the Collector, Kendrapara in Annexure-2 in which he has tagged the Chandanpur and Sanamantia Grama Panchayats of Kendrapara Block to one Kedar Chandra Biswal impleaded in this writ application as opp. party No. 5 withdrawing the said areas from the petitioner. The facts in brief necessary for the purpose of this writ application are as follows :

The petitioner claims to be a Sub-wholesaler in Kerosene Oil since 1980 and his area of operation has been specified to be six Grama Panchayats in Kendrapara Block, namely, Baro, Palasingha, Sanamantia, Gangapada, Chandanpur and Koro. For reasons best known to the concerned authorities, the petitioner was served with an order dated 3-6-1994 purported to be that of the Collector, Kendrapara that the Chandanpur and Sanamantia Grama Panchayats of Kendrapara Block have been assigned to opp. party No. 5, who is also a Sub-wholesaler of Kerosene oil under the Pattamundai Block. This withdrawal of area of operation from the petitioner and assigning the same to the opp. party No. 5 is alleged to

have been done for extraneous reason without any notice whatsoever to the present petitioner. The petitioner, therefore, prayed to quash Annexure-2, the order of the Collector in this behalf.

2. On being noticed the opp. parties 1 to 4, who are the Collector, Kendrapara Sub-Collector, Kendrapara; Block Development Officer, Kendrapara; and Civil Supplies Officer, Kendrapara respectively filed their counter affidavit denying the allegations made against them in the writ petition. Their case is that for smooth distribution of Kerosene Oil one of the relevant considerations is the distance of the concerned Grama Panchayats from the Depo where the Sub-wholesaler stores the Kerosene Oil. The order of tagging of two Grama Panchayats of Kendrapara Block to the Sub-wholesaler of Pattamundai was reasonable and justified on a consideration of the distance of the Depo of opp. party No. 5 in comparison to that of the petitioner in relation to the aforesaid Grama Panchayats. It is also asserted that it is the administrative function of the Collector which is permissible under law and no grievance can be made by the petitioner demanding to be heard in the matter Opp. party No. 5 has also entered appearance and filed a counter affidavit more or less supporting the stand of the opp. parties 1 to 4 and further explaining that the licensing authority and the Collector have exclusively jurisdiction to withdraw any area of operation from one Sub-wholesaler and give it to another Sub-wholesaler if the same is for public convenience. We required to look to the concerned records of the Collector to examine if there is sufficient justification to withdraw the two Grama Panchayats from the area of operation of the petitioner and to assign the same to opp. party No. 5. From the records we find that opp. party No. 5 made an application on 24-12-1993 to the Sub-Collector, Kendrapara asking for assigning four Grama Panchayats including the Chandanpur and Sanamantia Grama Panchayats in his favour on the ground that his Depo is nearer to these Grama Panchayats. On receipt of the said application the Sub-Collector sent the matter to the Block Development Officer, Kendrapara for enquiry and report in order that further action can be taken thereof. We find that the matter was then referred to the Block Level Advisory Committee who sat on 23-2-1994 to consider the application of present opp. party No. 5 along with other matters. From the resolution recorded by the said Committee It appears that the Committee made some discussions on the subject and unanimously agreed that the Committee would have no objection if the four Grama Panchayats mentioned in the application of the present opp. party No. 5 are assigned to Pattamundai Sub-wholesaler, namely the present opp. party No. 5. It does not disclose as to whether any enquiry was held nor discloses the reasons for which the said Grama Panchayats would be taken away from the area of operation of one Sub-wholesaler and give to another. On receipt of the said resolution of the Block Level Advisory Committee, Sub-Collector of Kendrapara enclosed the same to the Collector with his own recommendation. The said letter of the Sub-Collector dated 26-4-1994 also did not spell out the relevant consideration in support of his recommendation. The Collector in his turn on receipt of the letter of the Sub-

Collector passed the order as in Annexure-2 withdrawing the two Grama Panchayats from the area of operation of the petitioner and assigning the same to opp. party No. 5.

3. The learned counsel for the petitioner has strenuously urged that the aforesaid order in Annexure-2 is passed on no reason far Jess any acceptable ground justifying the change. His further submission is that the order in Annexure-2 is in gross violation of principle of natural justice for which reason the same is liable to be quashed. The learned Additional Government Advocate and also learned counsel for the opp. party No. 5 rely on Rule 11 of the Orissa Kerosene Control Order, 1962 in support their contention that the said rule empowers the State Government or the licensing authority to issue any direction to any dealer with regard to all matters including the purchase sale or storage for sale or distribution of Kerosene and the dealer shall comply such direction. We are unable to accept the aforesaid contention of the learned counsel for the simple reason that in exercise of powers under Rule 11, the Collector could not withdraw the area of operation from one licensee and give it to another licensee. It merely vests the power in the appropriate authority to issue any dealer in all matters including the purchase sale or storage for sale or distribution of Kerosene Oil and the authority of the licensing authority in this behalf is not questioned. The question for consideration in this writ application is as to whether during the continuance of a term of licence the licensing authority can withdraw the area of operation of the licensee either in part or in full in which event it would amount to cancellation of the licence so far as withdrawn portion of the area of operation is concerned. Rule 10 deals with cancellation or suspension of a licence for breach of terms and conditions of the licence and contravention of the provision of the Kerosene Control Order. There also it has been provided that an order cancelling or suspending the licence or the certificate shall be made without giving the dealer an opportunity of being heard and without recording the reasons for such order. If Rule 11 is construed to empower the licensing authority to pass any order affecting the dealer even in the absence of any breach committed by him, Rule 10 would be unnecessary to be in the Rules. That apart, the area of operation of a wholesale dealer is also a part of the terms and conditions of the licence. If any of the terms and conditions of the licence already granted is varied to his disadvantage, it is elementary that he must be given an opportunity of being heard. Neither the principle of natural justice has been observed before passing the order in Annexure-2 nor there is any material on record to justify the change of the area of operation as order by the Collector in Annexure-2. It was contended by the learned counsel for the opp. parties that the nearness of the Depo of opp. party No. 5 to the aforesaid Grama Panchyats is the main consideration which was so mentioned in the application of opp. party No. 5 and is the real justification in support of the order of the Collector. But neither the resolution of the Advisory Committee nor the Sub-Collector or the Collector has spelt out the same as a reason in justification of the order in Annexure-2.

4. We are, therefore, satisfied that the order in Annexure-2 has been passed without proper application of mind and not backed by relevant consideration. We would, therefore, allow this writ application, quash Annexure-2 and direct the opp. parties to take follow-up action accordingly till the expiration of the term of the licence.

A.K. Padhi, J.

I agree.