
(1996) 08 GAU CK 0034
In the Gauhati High Court
Case No : Civil Rule No. 578 of 1996 etc.

Smt. N. Pramodini Devi and Others

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 26-08-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Essential Commodities Act, 1955 — Section 3, 7

Citation : AIR 1997 Guw 100

Hon'ble Judges : P.K. Sarkar, J

Bench : Single Bench

Advocate : R.K. Nokulsana Singh, for the Appellant; L. Shyamkishore Singh, Government Advocate and N. Kumarjit Singh, for the Respondent

Judgement

P.K. Sarkar, J.—In all these writ petitions common questions of fuels and law are involved and as such these writ petitions are disposed of by this common judgment.

2. The fact of the case as gathered from all the writ petitions is that in order to distribute the S.K. Oil to the public, the Government of Manipur adopted a policy decision under which Agents/Sub-dealers have been appointed for each Polling station as specified in the appointment orders by the Deputy Commissioner.

3. The petitioners were appointed as sub-dealers by the Dy. Commissioner having jurisdiction over the area for the Polling Station as mentioned against their names in the order of appointment. After appointment the sub-dealer obtained licence from the competent authority as required under the Manipur Trade Articles (Licensing and Control) Order, 1986 and the petitioners were distributing Kerosene Oil to the consumers within their local areas. The Government has constituted a Review Committee to see the functioning of the sub-dealers. The Sub-Deputy Collector of the concerned area issues the Utilisation Certificate every month and thereafter the sub-dealers get allotment of K/Oil for the next month. In the instant cases the Review Committee within

whose jurisdiction the writ petitioners were working as sub-dealers, made inquiries and it was found that the functioning of the writ petitioners/sub-dealers are unsatisfactory as they have intentionally failed to distribute S.K. Oil, to the public. Accordingly, the Review Committee submitted its report to the Dy. Commissioner regarding unsatisfactory performance of the writ petitioners/sub-dealers.

4. On receipt of the report of the Review Committee headed by the S.D.O. within whose jurisdiction the writ petitioners/sub-dealers were working, the Dy. Commissioner "issued notice directing the writ petitioners/sub-dealers to show cause why their appointments should not be cancelled. The show cause notice issued by the Dy. Commissioner to all the writ petitioners/sub-dealers are in the same line and one of such show cause notices is reproduced below :

"Whereas SDO/IW-I in his letter No. 25/SDO/ IW/-I/FCS 90-95 dated 13-2-1996 has reported that your functioning of Sub-Dealership of S.K. Oil in P.S. No. 19/24 Patsoi A/5 is found to be unsatisfactory; because of your intentional non-distribution of S.K. Oil to the public from whom, the essential commodity that is S.K. Oil was issued.

You are therefore required to show cause as to why your trade licence and your sub-dealership of K. Oil should not be cancelled. You may submit your written explanation to this office on or before 4-3-1996 failing which it will be presumed that you have nothing to say."

After receipt of the show cause notice, the sub-dealers submitted their replies and in the replies the petitioners/sub-dealers stated that they are distributing S.K. Oil to the public regularly and Sub-Deputy Collectors (S.D.C.) of the area are issuing Utilisation Certificates regarding distribution of S.K. Oil to the consumers. It is, further, stated in the reply that there is no complaint from the consumers about non-distribution of S.K. Oil to them and in some cases the petitioners/sub-dealers also enclosed Registers showing the proper distribution of K. Oil to the consumers. After receipt of the show cause notice, the Deputy Commissioner appointed new sub-dealers in place of the petitioners/sub-dealers by cancelling the appointments of the petitioners. The petitioners have valid licences granted by the competent authority till 31-3-1996 and thereafter they have deposited fees by Treasury Challans duly certified by the office of the competent authority for renewal of their licences till 31-3-1997. But, in all the cases the competent authority has not yet renewed the licences of the petitioners and the competent authority has not also refused the renewal of licence to the petitioners and applications for renewal of licence of the petitioners are still pending with the competent authority. Orders cancelling the appointment of the writ petitioners' sub-dealership are also in the same line and one of such cancellation orders of appointment is reproduced.

"No. DC(I)/10/J/325/92-In supersession of all previous orders issued in this regard, the appointment of S.K. Oil sub-dealer in respect of P.S. No. 19/25,

Sadokpam Leikai issued in favour of Shri (1) Y. Surchandra Singh, (ii) S. Amu Singh, (iii) L. Ibomcha Singh hereby cancelled. In their place, (a) Shri Paonam Sindhu Singh s/o Shamu Singh, (b) Th. Amu Singh s/o Kanhai and (c) W. Rajan Singh s/o Manihar Singh respectively are hereby appointed as new sub-dealers for the above polling stations. The quotas and depot to be attached will remain unchanged.

The appointment may be cancelled at any time without assigning any reason thereof or without informing to the appointees."

Having felt aggrieved by the order of cancellation of the appointment as sub-dealer, the writ petitioners filed all the present writ petitions claiming the relief to quash the cancellation order and to allow them to continue as sub-dealer in K. Oil in their respective areas. The newly appointed sub-dealers in place of the writ petitioners have been made as party respondents in these writ petitions and they have filed counter affidavits. The State Government did not file any counter affidavit. The contention of the newly appointed sub-dealers is that the Dy. Commissioner has power to cancel the appointment of the petitioners as they were found by the Review Committee that they are not distributing the K. Oil to the public properly. The Dy. Commissioner has power to appoint new sub-dealer and there is no illegality in the action of the Dy. Commissioner. Consequently, these respondents submitted that they should be allowed to function as sub-dealers in K. Oil in their respective areas.

5. The question that raises in these writ petitions are :--

(a) whether the cancellation order issued by the Deputy Commissioner in respect of the writ petitioners is legal and valid; and

(b) whether the writ petitioners can be continued to deal with K. Oil without renewal of their licences?

6. I have heard Mr. R.K. Nokulsana Singh, the learned counsel appearing on behalf of the petitioners Mr. Bimol Sharma and also Mr. I. Lalitkumar Singh, learned counsel appearing on behalf of the private respondents. Heard also Mr. L. Shyamkishore Singh, the learned Govt. Advocate.

7. Mr. R.K. Nokulsana Singh, learned counsel for the petitioners submits that the petitioners were appointed as sub-dealers of S.K. Oil in respect of the polling Stations mentioned against their names in the order of appointment and they were discharging their duties honestly and faithfully. The learned counsel draws the attention of the Court to the Utilisation Certificate issued by the S.D.C. in favour of the petitioners from where it would appear that the petitioner/sub-dealers were distributing S.K. Oil to the public properly. One of such Utilisation Certificate is reproduced below ;

"UTILIZATION CKRT1F1CATE

This is to certify that Shri/Smt. Yamunam Surchandra Singh of Mayaikoibi

Ningthoujam Leikai is K. Oil sub-dealer for polling station No, 19/25(new) has duly distributed 380 liters of K. Oil lifted by him/her for the month of Feb. 1996 to the consumers in his jurisdiction. There is no balance in his stock. His next quota may be released.

Sd/- K.L. Sharma

Sub-Dy. Collector/IW (Palsoi)"

8. The Dy. Commissioner cancelled the appointment of the petitioners as sub-dealers between the period from January, 1996 to May, 1996. The utilisation certificate issued by the S.D.C. shows that the petitioners' appointments were cancelled even though they were properly distributing K. Oil even in the previous month. The learned counsel for the petitioners consequently, submitted that the Dy. Commissioner has no reason to issue the show cause notice alleging the irregular distribution of S.K. Oil to the public in the face of the Utilisation certificate issued by the S.D.C. The learned counsel, therefore, submitted that the show cause notice issued by the Dy. Commissioner is not based on facts and the aforesaid show cause notice have been issued to the petitioners with the motive to cancel the appointment of the petitioners as S.K. Oil sub-dealers. The learned counsel also submitted that the petitioners/sub-dealers along with their replies submitted the Registers maintained by them to show proper distribution of S.K. Oil to the public. Mr. R.K. Nokulsana Singh, further, submitted that in the show cause notice the Dy. Commissioner has stated that the S.D.O. of concerned area reported that the functioning of the petitioners as sub-dealers is found to be unsatisfactory because of their intentional non-distribution of S.K. Oil to the public. The basis of issuing the show cause notice is the report of the SDO and thereafter even though the petitioners have submitted their replies along with other supporting documents, the Deputy Commissioner without making any inquiry, cancelled the appointment of the petitioners as sub-dealers in S.K. Oil. The learned counsel, therefore, submits that the Dy. Commissioner has not applied his mind about the correctness of the allegation made against the petitioners. The copy of the report of S.D.O. has not been furnished to the petitioners nor any definite charge has been brought against the petitioners. The Dy. Commissioner has mechanically issued the show cause notice and thereafter without applying his mind, cancelled the appointment of the petitioners/sub-dealers in S.K. Oil. Before cancelling the appointments of the petitioners as sub-dealer in S.K. Oil, the D.C. did not apply his mind and he has not given any reason for cancelling the appointment of the petitioners as S.K. Oil dealers. The learned counsel for the petitioners, therefore, submitted that the D.C. was influenced by the report of the S.D.O. and without making any inquiry and without giving any chance to the petitioners of being heard, he has cancelled the appointment of the petitioners and therefore the order of cancellation issued by the Dy. Commissioner in respect of the appointment of the petitioners as sub-dealers in S.K. Oil is required to be quashed.

9. Mr. L. Shyamkishore Singh, the learned Govt. Advocate appearing on behalf of

the Slate submits that the essential commodities like S.K. Oil are owned by the State Govt. and dealer and sub-dealers are appointed for proper distribution of S.K. Oil to the Card holder or to the consumers in accordance with the provisions of the Manipur Trade Articles (Licensing and Control) Order, 1986. The learned Govt. Advocate, further, submitted that no one can claim the right of licence to deal with essential commodities. Granting of licence or cancellation thereof is an Administrative decision and not a judicial order and consequently any person aggrieved by an order of appointment or cancellation of dealers or sub-dealers of essential commodities cannot have any fundamental right to challenge the same and they do not have any right to carry on business of essential commodities and when any licence is cancelled the principle of natural justice cannot be invoked in such cases. Learned Govt. Advocate further submits that on the basis of the report of the Review Committee the D.C. has cancelled the appointment of the petitioners as sub-dealers in S.K. Oil as the Committee has found that the petitioners were not properly distributing the S.K. Oil to the public. Learned Govt. Advocate, further, submitted that new sub-dealers were appointed in place of the petitioners as per recommendation of the Review Committee. There is no illegality in such acts.

10. I cannot wholly agree with the submission of the learned Govt. Advocate. It is true that a person has no fundamental right to carry on business of any essential commodities which are owned by the State Government, but a citizen has right to be considered for appointment as Dealer or sub-dealer in essential commodities owned by Govt. when licence for carrying on business on essential commodities to the private individuals are issued. Further, in a case where new appointments are made in cancellation of earlier dealers then the earlier dealers have a right to challenge such termination order if such termination order are not passed in accordance with law, and principle of natural justice will apply not only in the matter of judicial order but also in respect of administrative orders when such cancellation will have a civil consequence. Since in the present cases the appointments of sub-dealers is not a fresh one and since these appointments are made in place of existing sub-dealers, therefore, I am of the view that the existing sub-dealers has a right to challenge the cancellation of their appointments if they feel that their cancellation order was not passed in accordance with law and violative of the principle of natural justice.

11. Mr. L. Shyamkishore Singh, learned Govt. Advocate submits that the State Govt. has power to constitute a Committee to supervise the functioning of the Ration shops and Rationing Agents and accordingly the Government has constituted a Review Committee headed by the SDO of the concerned area. It is, further, submitted that the Review Committee has found that the petitioners has committed irregularity in the distribution of S.K. Oil to the consumers and accordingly they have submitted a report to the D.C. for cancelling the appointment of the petitioners and the Committee has also recommended new names for appointment as sub-dealers. Mr. Shyamkishore Singh, learned Govt. Advocate, therefore, submits that there is no illegality in cancelling the

appointment of the petitioners as S.K. Oil sub-dealers specially when they were found by the Committee that they had committed irregularity in distributing S.K. Oil to the consumers. It is true that the Govt. has power to constitute a Committee to see the performance and functioning of S.K. Oil sub-dealer or Fair Price Shop owners within their jurisdiction and they are also competent to recommend for cancelling appointments or otherwise of the existing sub-dealers for S.K. Oil or Dealer of Fair Price Shop. But the Dy. Commissioner who is the Appointing authority of sub-dealer in S.K. Oil should not have gone along with the recommendation of the Review Committee. In my opinion he should have satisfied himself after making an inquiry whether the sub-dealers were really adopting unfair means or making any irregularity in the distribution of S.K. Oil to the consumers. The report or the recommendation of the Review Committee constituted by the Govt. may be of certain help to the Dy. Commissioner while taking a decision, but their report and recommendation alone cannot be a ground for cancellation of appointment of sub-dealers of S.K. Oil or owners of Fair Price Shops. In the present case it appears that the D.C. has made a general allegation against the petitioners/sub-dealers regarding irregularity in the distribution of S.K. Oil on the basis of the report of the S.D.O. Along with show cause notice, the report of the Review Committee has not been furnished to the petitioners neither any specific allegations has been made against the petitioners/sub-dealers regarding irregularity in distribution of S.K. Oil to the consumers. The petitioners have submitted replies to the show cause notice issued by the D.C. But it appears that the D.C. did not make any independent inquiry about the general allegation made against the petitioner and instead the Dy. Commissioner, on the basis of the report of the Review Committee, cancelled the appointment of the petitioners as S.K. Oil sub-dealer by a non-speaking order. On a plain reading of the show cause notice or the cancellation order, it does not appear that the D.C. was satisfied himself about the allegation made by the Review Committee against the petitioners sub-dealers. On the contrary, it appears that D.C. has acted mechanically on the basis of the report of the Review Committee. The show cause notice or the cancellation order do not indicate the subjective satisfaction of the D.C. regarding the general allegation made by the Review Committee against the petitioners.

12. Having regard to the facts and circumstances stated above, I am of the opinion that the D.C. has acted on the recommendation of the Review Committee and he has not satisfied himself about the general allegation made against the petitioners. The petitioners were also not heard before the cancellation order was passed though in the Government instruction it has been stated that before cancellation the party should be heard. Further, it appears that the SDC of the concerned area has issued Utilisation Certificate to the petitioners sub-dealers to the effect that they are properly distributing S.K. Oil to the consumers. The SDC of the concerned area is a responsible officer. Unless the petitioners distributed the S.K. Oil properly to the consumers, he would not have issued such certificate to the petitioners sub-dealers. Therefore, the allegation made by the Review

Committee that the petitioners are not properly distributing S.K. Oil to the consumers do not appear to be correct in view of the Utilisation certificate issued by the S.D.C.

13. Having regard to the facts and circumstances stated above, I am of the view that since the D.C. has not made any independent inquiry in respect of the general allegation made against the petitioners and since the petitioners were not heard before passing the cancellation order, the aforesaid order of cancellation is illegal, arbitrary and violative of natural justice. Consequently, the order of cancellation issued by the D.C. in respect of the appointment of the petitioners as dealers in S.K. Oil is required to be quashed and accordingly the orders passed by the Dy. Commissioner cancelling the appointment of the petitioners as S.K. Oil dealership are hereby quashed.

14. Mr. R.K. Nokulsana Singh, learned counsel for the petitioners submitted that the petitioners in all the cases were issued licence by the competent authority to carry on the business of S.K. Oil up to 31-3-1996. The learned counsel also submits that as per Rule 5 of the Manipur Trade Articles (Licensing and Control) Order, 1986 all the petitioners, deposited renewal fees by Treasury Challan and the challans were duly certified by the concerned officers of the Food and Civil Supplies Department. The learned counsel for the petitioners submits that the licensing authority has not yet renewed the licences of the petitioners up to March, 1997, neither the competent authority has rejected the renewal application of the petitioners. The renewal applications of the petitioners are still pending with the competent authority. The learned counsel, therefore, submits that till the licence is renewed or refused by the competent authority, the petitioners are entitled to carry on the business of S.K. Oil as sub-dealers.

15. Mr. L. Shyamkishore Singh, learned Government Advocate submits that after appointment as sub-dealer of S.K. Oil, a person is required to obtain a licence for carrying business of S.K. Oil under the Manipur Trade Articles (Licensing and Control) Order, 1986. The learned Govt. Advocate submits that the licence of the petitioners has expired on 31-3-1996 and their licences has not been renewed by the competent authority and consequently the present petitioners who are not holding any valid licence can be allowed to continue to carry on business of S.K. Oil. I do not agree with the submission of the learned Govt. Advocate, because, from the aforesaid Manipur Trade Articles Order, 1986 it appears from Rule 5 that an application for renewal of licence shall be made along with fee determined under Clause 6 to the Licensing authority and licence may be renewed for a year or for a period of 3 years at a time. It is further provided that in case the licensee fails to furnish an application along with fees within the stipulated time of 31-3-1996, the licensing authority may entertain the application up to 30-4-1996 upon payment of late fee as specified in Clause 5. It is further provided in Clause 8 of the aforesaid order that the licensing authority may, after giving the persons affected, an opportunity of being heard for reasons to be recorded by him in writing refuse to grant or renew the licence. So, on a plain reading of the

aforesaid provision of the Manipur Trade Articles (Licensing and Control) Order, 1986 it appears that even after expiry of the period of licence, the Licensee can apply for renewal of the licence after the period prescribed under Clause 5 up to April with late fee. It is the duty of the licensing authority to grant or to refuse the renewal in time. In the present case, the petitioners have deposited renewal fee by Treasury challans duly certified by the competent officer by March and April, 1996. The prayer of renewal of the licences of the petitioners have not yet been granted neither the prayer for renewal of licence of the petitioners have been refused by the licensing authority. Since the prayer for renewal of licence of the petitioners has not been refused by the competent authority, I am of the opinion that the petitioners are entitled to continue in the business of S.K. Oil as sub-dealer. However, they will cease to deal with the business of S.K. Oil if their prayer for renewal of licence is refused by the competent authority in accordance with the provisions of Clause 8 of the Manipur Trade Articles (Licensing and Control) Order, 1986.

16. Having regard to the facts and circumstances stated above, I am of the opinion that the orders passed by the Deputy Commissioner cancelling the appointments of all these petitioners as sub-dealers of S.K. Oil in respect of the polling stations shown against their names in the very orders of appointment is arbitrary and illegal and accordingly the impugned order passed by the Deputy Commissioner cancelling the appointment of the petitioners in all these writ petitions are quashed. The subsequent appointment made by the Deputy Commissioner in place of the writ petitioners are illegal and invalid and therefore quashed. The petitioners are entitled to continue in the business of S.K. Oil as sub-dealers till the period they will hold a valid licence issued by the competent authority. If the licence of the petitioners are renewed, they will be entitled to continue to deal with the business as sub-dealers of S.K. Oil in terms of the licence, but if the renewal application of the petitioners are refused by the competent authority in accordance with the provisions of the Manipur Trade Articles (Licensing and Control) Order, then the petitioners will cease to continue in the business of S.K. Oil as sub-dealers. However, this order of quashing the cancellation order passed by the Deputy Commissioner will not prevent him to take action against the petitioners in accordance with law.

17. With the above direction and observation all the writ petitions are disposed of. Having regard to the facts and circumstances of the case, I make no order as to costs.