

(2000) 03 OHC CK 0028

In the Orissa High Court

Case No : Original Jurn. Case No. 182 of 2000

Smt. Tulasi Panda

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 02-03-2000

Acts Referred:

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

Citation : AIR 2000 Ori 103 : (2000) 90 CLT 176

Hon'ble Judges : Pradipta Ray, J;L. Mohapatra, J

Bench : Division Bench

Advocate : Rajendra Ch. Mohanty, B.K. Mohanty, B. Behera, P.K. Rath and A.P. Bose, for the Appellant; Addl. Standing Counsel, S.K. Nayak, B.K. Rout, B.K. Sahoo, K.K. Rout, G.K. Jena and P. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

Pradipta Ray, J.—In 1994 the writ petitioner was appointed a sub-wholesaler in Kerosene and was granted a licence under the Orissa Kerosene Control Order, 1962. Initially, the petitioner was permitted to lift 9200 litres of kerosene, but subsequently she was allowed to supply kerosene to 19 retailers of four Gram Panchayats, namely, Ayoba, Purusottampur, Kansar and Ostopur and the quota came to be raised to 15,000 Litres. The petitioner's licence under Kerosene Control Order has been renewed from time to time and the licence is valid till 31st March, 2000. On January 3, 2000 suddenly the Collector appointed opp. party No. 5 as sub-wholesale dealer for the Grama Panchayats Ayoba and Purusottampur and the area of operation of the petitioner has been reduced to two Grama Panchayats, namely; Kansar and Ostopur. Under the said order the monthly quota of the petitioner has come down to 9260 litres. The petitioner has challenged the said appointment of opp. party No. 5 and consequent reduction of area of operation and curtailment of quota.

2. In the writ petition the petitioner has asserted that till date there is no

allegation against her performance and none of the retailers attached to her raised any grievance against her. The petitioner has also stated that before curtailing her area no opportunity of hearing was given to her.

3. Mr. Mohanty, learned Advocate appearing for the petitioner has submitted that reduction of area of petitioner's sub-wholesalership amounts to cancellation of the licence and accordingly, the area of operation mentioned in the licence Cannot be reduced without giving an opportunity of hearing to the licensee. In support of his submission Mr. Mohanty has relied upon a Division Bench decision of this Court in *Sarala Distributors v. Collector, Kendrapara*, reported in (1993) 2 Ori 290. In *M/s. Sarala Distributors*" case this Court has held that in exercise of powers under paragraph 15 of the Orissa Kerosene Control Order the Collector cannot withdraw area of operation from one licensee to another and that if any of the terms and conditions of the licence already granted is varied to the disadvantage of the licences, he must be given opportunity of being heard. 4. Orissa Kerosene Control Order, 1962 prohibits business as a wholesale dealer or a sub-wholesale dealer in Kerosene within the State of Orissa except and in accordance with the terms and conditions of a licence granted by the licensing authority (vide paragraph 3 of the Kerosene Control Order). The licence to be granted to a wholesale or a sub-wholesale dealer is in Form II appended to the said Control Order. Under paragraph 2 of the licence only the place wherefrom a wholesale dealer or a sub-wholesale dealer will carry on the business is to be specified. The licence does not prescribe or mention the area to be served and/or the retailers who would receive supply from a particular sub-wholesale dealer. The area of operation is specified by separate administrative order. The petitioner has annexed his licence as Annexure 2. It will also appear from the said annexure that only the place/location wherefrom the petitioner would carry on her business has been specified under paragraph 2 as Kansar, Plot No. 1362, Kendrapara Block. Even in the form of application for licence as a sub-wholesale dealer (Form No. I) an applicant is not required to state the area of operation. He is only required to indicate place or places wherefrom a licensee wants to carry on his business. It is not correct that the area of operation allotted to wholesale dealer or sub-wholesale dealer is a part of condition of the licence. In the writ petition itself the petitioner has admitted that originally the quota allotted to her was 9200 litres which was subsequently raised to 15,000 litres. The licence being Annexure 2 nowhere mentions the quota allowed to be lifted. It is very clear that the area of operation and the quota is fixed from time to time by separate administrative orders. As the area of operation and the allotment of quota is not specified in the licence, any alteration or modification thereof cannot be treated as an alteration or modification of the licence.

5. The sub-wholesale dealer in Kerosene is appointed for the purposes of distribution of Kerosene, an essential commodity under the public distribution system. Appointment of whole-sale dealer, sub-wholesale dealer and retailer to deal with an essential commodity, the specification of area of operation, allotment of quota etc. are meant to serve the interest of the consumers of

particular essential commodities under public distribution system. Accordingly, if the prescribed authority is of the opinion that, appointment of more wholesale or sub-wholesaler dealer will make the public distribution system more effective and easily accessible he can appoint such wholesale or sub-wholesale dealer and consequently reduced the area of operation of an existing wholesale or sub-wholesale dealer. However, the prescribed authority cannot reduce or curtail the area of operation of an existing licensee to such an extent which will practically amount to deprivation of his business as a wholesale or sub-wholesale dealer.

6. It appears that in M/s. Sarala Distributors" case the above aspect was neither placed before nor considered by the said Division Bench and the case was decided on the assumption that the specification of area of operation is a condition and part of the licence, As the basic assumption in M/s. Sarala Distributors" case is found to be nonexistent, in our view, the said decision in M/ s. Sarala Distributors was arrived at sub-silentio and accordingly said decision is not authoritative on the view expressed by us in this case. In this connection reference may be made to the discussion in Chapter 5, Section 27, Sub-section (6) under the heading "precedents sub-silentio or not fully argued" in Salmond on Jurisprudence, 12th Edition at pages 153-156.

7. For the foregoing reasons, we do not find any merit in the petitioner"s case, particularly when withdrawal of area and consequently curtailment of quota does not amount to deprivation of her right of business under the subsisting licence.

8. The writ petition is accordingly disposed of.

L. Mohapatra, J.

9. I agree.