

(2001) 02 GUJ CK 0071

In the Gujarat High Court

Case No : Special Criminal Application No. 33 of 1999

State of Gujarat

APPELLANT

Vs

Proprietor, P.M. Sanghavi and Company

RESPONDENT

Date of Decision : 16-02-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2001) 21 GLH 178

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : H.H. Patel, app, for the Appellant; J.D. Ajmera, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Keshote, J.—This is a petition under Articles 226 and 227 of the Constitution of India directed by the State of Gujarat and the District Supply Officer, Banaskantha at Palanpur against the Judgment of the learned Sessions Judge, District Banaskantha, Palanpur dated 12.10.1998 in Criminal Appeal No.8 of 1998. Under this order the learned Sessions Judge, Banaskantha District, Palanpur allowed the appeal filed by the respondent and order of the Collector, Banaskantha District, Palanpur, dated 23rd March, 1998 was set aside and it is ordered that amount of Rs.95,331.36p. if recovered from the respondent be refunded to him accordingly.

2. Briefly stated facts of the case are that on 24th April, 1997, the petrol pump of the respondent was inspected by the District Supply Officer. On inspection, it was found that there are some irregularities and density of the diesel was not in order and therefore, by an order bearing No. E/Supply/KSN/6-A/12/97, dated 23rd March, 1998, 50% of the stock of diesel worth Rs.95,331.36ps was confiscated. This order is challenged by the respondent before the Sessions Court. The appeal has been allowed and, hence, this Special Criminal Application.

3. Heard the learned counsel for the parties.

4. The learned counsel for the petitioner contended that the appellate court has erred in allowing the appeal. It is a case where the respondent has committed irregularities and 50% of the Stock of the diesel was ordered to be confiscated. It is further contended that it is a case of malpractice committed by the respondent-dealer of petroleum products. Density of the diesel was found different than what it should have been as per the provisions of Motor Spirit and High Diesel (Prevention of Malpractice in Supply and Distribution) Order (1990), on taking of the samples of the diesel. It was found on checking of stock register that on 23rd April, 1997 and 24th April, 1997, the entries were made therein by a Pencil and this is a very serious irregularity. This was not a mere technical but substantial irregularity and it should not have been ignored by the learned Sessions Judge. Another irregularity is that conduct of the respondent was not cooperative to the inspecting officer and further misbehaviour of the servants with the inspecting officer is a breach of condition No.10 of the Licence. The licence was also not produced at the time of inspection. No names and address of the customers were written in the bills which is also a serious irregularity. Concluding his submission, Mr. Patel, learned APP, submits that even if it is taken that density of the diesel was tallying with the prescribed density in view of other irregularity which was accepted by the appellate Court, no interference should have been made by it in the matter.

5. The learned counsel for the respondent firstly submitted that the density of the diesel on the chemical analysis was found to be within permissible limits. It has next been contended that for other irregularities, the respondents have been penalized by the authorities by ordering of the suspension of the licence for 90 days. It is a case where the Officer of the Supply Department has punished the petitioner for the same irregularities again. Lastly, it is contended that the irregularities pointed out are only of technical nature and for which strict action of confiscation of 50% stock of the diesel was not justified.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

7. The learned Sessions Judge, relying on the report of chemical analysis, held that there was no defect in density of the diesel and no adulteration in the diesel. Adulteration in the diesel is serious offence and in case, on chemical analysis, it is found so then the minimum penalty should have been cancellation of the licence and not the confiscation of the stock of diesel only. In this case, samples taken of the diesel were sent for chemical examination and density thereof was found to be within permissible limits. The learned Sessions Judge was correct in his approach that if this alleged illegality is not accepted then remaining irregularities are mere technical in nature. It is true that stock register of diesel and D.S.R. were inspected wherein, it was found that on 23rd April & 24th April, 1997, the entries were written by Pencil. What has been found is merely an irregularity of technical nature without any allegation of malpractice. Only on the basis of this, it is not justified to confiscate the heavy quantity of the diesel.

Other irregularity regarding noncooperation of the respondent to the Inspecting Officer and misbehaviour of the servants with the Inspecting Officer, suffice it to say that it is a matter of fact and the learned Sessions Judge has recorded a finding of fact that it is not the case of the misbehaviour of the servants with the Inspecting Officer as well as noncooperation. The finding of the fact is recorded by the appellate Court and the learned counsel for the respondent has failed to point out any illegality or to say any perversity therein. Sitting under Article 227 of the Constitution, this Court is not an Appellate Court over the decision of the Sessions Judge. In fact and substance this is a petition under Article 227 of the Constitution wherein the scope and ambit of interference of this Court is very limited. The licence was not produced at the time of confiscation but it is not the case of the petitioner that the respondent was not in possession of a valid licence. The respondent has given explanation that the licence is at his other shop. Technically speaking, the licence should have been available at the site and it has to be pasted at a proper place by the dealer. But, when admittedly, the valid licence was there only on this technical defect, confiscation may not be correct and it is held so by the Sessions Court. The approach of the Sessions Court cannot be said to be perverse and no interference of this Court in the matter is called for. Similarly, the irregularity that the address of the customer was not written in the diesel sales bill, is again a technical defect. I had occasion to deal with some what identical matter earlier. In a City like Ahmedabad heavily populated city, it is very difficult for the dealer to give out the name and the address of the purchaser of the petrol and diesel from the pump in cash memo. If conditions of this type is insisted by the petitioner, I have my own reservation and doubt, will serve any public purpose. In fact and in substance, it will create a problem for the purchaser of the petroleum products who goes to the petrol pump. It is not gainsaid that 90% of the consumers of petroleum products and to be very specific, to whom the cost of the petroleum product is not to be reimbursed, do not bother for taking of the bill. Only those consumers who are entitled for petrol allowance or cost of petrol is reimbursable to them, they may insist for giving of the cash memo. This category of the consumers may not be in large number and if this condition is insisted, it will result in causing inconvenience and discomfort etc. to the consumers. The consumers of this category are satisfied if the person at the petrol pump mentions the number of vehicle in the cash memo. This matter needs to be examined by the Officers at Gandhinagar, regarding this condition. Enforcement of such a condition of permit / licence is possible only when there were few numbers of the vehicles on the roads. Here, today it is a fact, of which a notice can be taken, that within three months in a city like Ahmedabad more than 10,000 vehicles are registered and come on the roads. On the petrol pumps, long queues of the customers are there and if it is insisted of mentioning of the names and addresses of the purchasers on cash memos, it will not only consume their time but cause inconvenience and difficulties to the consumers. If an action is taken by the officers for breach of such a condition of the licence in the present scenario, it is difficult to appreciate. In case, mentioning of the names and addresses of the

consumers on the cash memos are insisted by the Officers of District Supply Department, it will result in causing manifold inconveniences and difficulties to the consumers. There will be very very long queues of the persons on pumps who desire to purchase petroleum products. In the Metro and big cities, we can see long queues of the purchasers of petroleum products and it may also create traffic hazards and result in accidents and obstruction on the roads. Most of the outlets of the petroleum products of the retail dealers are on the road side that is to say in the City and the insistence to strictly follow this condition of the licence will not be in larger interest of the public. Otherwise also, the licensee does not write the names of the purchasers of the essential commodities on the cash memo unless there is case of a malpractice or black marketing in the products ipso facto cannot be taken to be such a lapse on his part which justifies imposition of heavy penalty. The judgment of learned Sessions Judge on this point is confirmed on the grounds other than what has been given by the learned Sessions Judge.

8. In the result, this Special Criminal Application fails and same is dismissed. Rule is discharged. Interim relief if any granted stands vacated. No order as to costs.