

(2006) 12 KL CK 0011
In the High Court Of Kerala
Case No : W.A. No. 216 of 2003

State of Kerala and Others

APPELLANT

Vs

Mathunni Mathew and Sons

RESPONDENT

Date of Decision : 21-12-2006

Acts Referred:

Kerosene Control Order, 1968 — Rule 8A

Citation : (2006) 12 KL CK 0011

Hon'ble Judges : V.K.Bali, C.J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : M.R. Sabu, Govt. Pleader, for the Appellant; T. S. Radhakrishna Pillai and T.R. Rajeev, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—This Appeal filed by the State is against the judgment of the learned single Judge holding that State is not entitled to collect differential cost recovered by Respondent for supply of kerosene to ration dealers. The case of the State is that the decision relied on by the learned single Judge for allowing the Respondent's claim is not applicable to the facts of this case, because what is allowed by the Division Bench in the said decision is wastage allowance and not differential cost. We have heard Government Pleader appearing for the Appellant and Counsel appearing for the Respondent, Petitioner in the O.P.

2. Respondent, a distributor of kerosene appointed by Indian Oil Corporation, is admittedly a licensee engaged by the Government for supply of kerosene to ration dealers. Ext.P-1 produced in the O.P. is the agreement between the Respondent and the Indian Oil Corporation. However, supply of kerosene by the Respondent to ration dealers is based on the Kerosene Control Order, 1968 issued under the Essential Commodities Act Respondent is entitled to lift the quantity from IOC allotted to the State Government and distribute the same to the ration dealers at the agreed price. It is seen from the statement attached to Ext. P-2 issued by the District Collector that price paid to the Respondent is

based on the ex-installation price of kerosene at the distributor's point, that is, Indian Oil Corporation installation, and along with it Respondent is paid sales tax, addl. sales tax, transportation charges, leakage allowance, loading and unloading charges, depreciation for container and agency commission and retail margin. Respondent is admittedly bound to supply kerosene at the price fixed by the District Collector. However, it so happened that the issue price of kerosene was increased by Government with effect from 1-1-1992 which was collected by the Respondent from the purchasing ration dealers. Government has claimed this amount, which is contested by the Respondent by filing Writ Petition.

3. The short question therefore to be considered is whether the Government is entitled to collect excess amount recovered by the Respondent. The relevant provision of the Kerosene Control Order, 1968 is as follows:

8A. Wholesale selling price.-A wholesale dealer shall sell kerosene at the wholesale selling price fixed by the District Collector from time to time under the orders issued by the State Government having regard to the provisions of the Kerosene (Fixation of ceiling prices) Order, 1970.

Provided that whenever the issue price of kerosene is revised upward, differential cost worked out at the difference between the revised wholesale selling price and the pre-revision selling price on the closing stock available with the dealer on the close of business on the day previous to the day on which the revised rate comes into force shall be payable to the Government by the wholesale dealer.

Provided further that in the case of downward revision of issue price, the dealer shall be free to sell the stock procured at the pre-revision rate, at the rate as in force on the day previous to the day on which the revised rate comes into force.

It is clear from the first proviso above that where wholesale price is revised upwards Government is entitled to recover the excess price received by the Respondent on the closing stock. Corresponding provision is made in the second proviso to the above rule which entitles the Respondent to receive differential price from the Government if there is downward revision of issue price.

4. In the circumstances we are unable to uphold Respondent's claim because State Government is entitled to recover differential price under the first proviso to Rule 8A of the Kerosene Control Order. The scheme of arrangement between the Government and the Respondent is that Respondent is assured of cost plus allowances and margin. In other words, the issue price is fixed after providing cost, and margin to the Respondent. Whenever there is a price variation, gain or loss should go to the Government, is the Rule. We find no justification for the Respondent to claim differential price because if it is accepted in principle, the Respondent should suffer loss on account of downward price revision against which Respondent enjoys protection under the second proviso to Rule 8A. Even though Counsel for the Respondent relied on the decision of this Court in *Taluk Supply Officer v. Parakkottil Brothers* 1991(2) K.L.T.901, based on which learned Single Judge allowed the claim and contended that the Respondent is not an

agent of the Government, we do not think the decision has any application because the relationship between the Respondent and Government is covered by Kerosene Control Order which the Petitioner has not disputed, hi the said decision the Court was dealing with a situation where there was no provision to recover differential cost in the Kerosene Control Order. In fact Rule 8A was introduced by SRO No. 1083/88 dated 12-9-1988 probably to get over the decision of Division Bench of this Court Therefore after the amendment to the Rule by introduction of Rule 8A, Respondent is not entitled to differential price recovered.

In the circumstances, Writ Appeal is allowed vacating judgment of the learned Single Judge and declaring Government's entitlement to recover differential price in terms of the demand.