(1999) 01 KL CK 0007

In the High Court Of Kerala

Case No : W.A. No. 2580 of 1998

State of Kerala and Others — APPELLANT

Vs

M.K. Vanajakshy — RESPONDENT

Date of Decision : 07-01-1999

Acts Referred:

Citation : AIR 1999 Ker 145

Hon'ble Judges : K. Narayana Kurup, J;A.R. Lakshmanan, J

Bench : Division Bench

Advocate : Alexander Thomas, Govt. Pleader, for the Appellant; T.S. Radhakrishna Pillai, for the Respondent

Judgement

A.R. Lakshamanan, J.—Heard Mr. Alexander Thomas, Government Pleader for Appellants and Mr. T.S. Radhakrishna Pillai for Respondent .

2. This appeal has been filed against the judgment of Koshy, J. dated 9-9-1998 in O.P. 2518/93 allowing the Original Petition filed by the Respondent herein following an earlier Division Bench judgment of this Court reported in Taluk Supply Officer, Manjeri, Malappuram and Another Vs. Parakkottil Brothers, Vandoor and etc., , which held that the wholesale dealers are not agents of the Government and there is no relationship of principal and agent and therefore the State Government cannot direct the wholesale dealers to remit or pay the so called excess profit or the differential cost or profit made by the sale in excess of the price fixed and Government also cannot make such a demand. We have gone through the above decision. In our opinion the principles laid down in the said judgment squarely applies to the facts and circumstances of the case on hand. Therefore we hold that the judgment of the learned single Judge setting aside Exts. P4, P6 and P8 is in order.

3. In this case we are concerned with Exts. P4, P6 and P8. Ext P4 relates to the period 1-4-1983 to 31-5-1984. Under Ext. P4 Respondent was requested to remit the amount realised in excess under the head of account -- 088(a)(1) and

produce the receipted chalan on or before 6-5-1985. Ext. P6 is the charge memo dated 1-3-1985 issued by the Taluk Supply Officer, Tirur calling upon the Respondent to offer his explanation in writing as to why the entire security deposit furnished by K.W.D. should not be forfeitted to Government besides the realisation of excess cost. The date mentioned in Ext. P6 relate to 1-6-1984 to 30-4-1985. Ext. P8 is the final order in relation to Ext. P6. In our opinion the notice issued by the Appellants under Exts. P4 and P6 are incompetent in view of the Division Bench judgment reported in Taluk Supply Officer, Manjeri, Malappuram and Another Vs. Parakkottil Brothers, Vandoor and etc., . As held by the Division Bench the Respondent who is the wholesale dealer is not the agent of the Government nor they have any fiduciary capacity to Government so as to enable the Government to claim excess or differential profit earned by the dealers. When there is no relationship of principal and agent it is incomprehensible as to how the Appellant State can demand wholesale dealers to remit or pay the so-called excess profit or the differential cost or profit said to have been made by the wholesale dealers by the sale in excess of the price fixed. Therefore we hold that the action initiated by the State Government under Exts. P4, P6 and P 8 are not permissible in law.

4. Learned Government Pleader then invited our attention to the proviso to the newly introduced Clause 8A of the Kerosene Control Order 1968 which reads as under:

8A. Wholesale Selling Price: ....

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.

The said proviso to Clause 8A is not applicable to the case on hand since the action initiated against the Respondent herein relates to the period 1983-84. The said clause was inserted by SRO 1083/88 dated 12-9-1988 and published in the gazette dated 4-10-1988. This apart the said clause is only prospective in operation. Hence the above argument of the learned Government Pleader cannot be countenanced. As already noted Clause 8A was inserted only on 12-9-1988 and it is open to the Government to take action against the wholesale dealers like the Respondent and others only from that date and not earlier. Writ Appeal is disposed of accordingly.

