

(2011) 06 BOM CK 0151
In the Bombay High Court
Case No : Writ Petition No. 171 of 2011

Subhash Narendrulwar

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 13-06-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2011) 06 BOM CK 0151

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : Anjan De, for the Appellant; T. Khan, learned Asstt. Govt. Pleader for Respondent Nos. 1 to 3., for the Respondent

Judgement

R.M. Savant, J.—Rule with the consent of the parties made returnable forthwith and heard.

2. The above petition filed under Articles 226 and 227 of The Constitution of India takes exception to the order dated 25/07/2010 passed by Hon"ble Minister, Food, Civil Supplies and Consumer Protection, Government of Maharashtra, by which order the revision application filed by the Petitioner came to be allowed and resultantly the order dated 30/03/2009 issued by the District Supply Officer, Chandrapur Respondent No. 2 was set aside. The operative part of the order passed by the Hon"ble Minister, Food, Civil Supplies and Consumer Protection, Government of Maharashtra runs in about six paragraphs. The Petitioner has a grievance in respect of the directions imposing fine and forfeiting the security deposit, which are contained in clause No. 3 of the said operative part. The said clause No. 3 would be adverted in the later part of this order.

3. The facts involved in the above petition are briefly stated thus.

The Petitioner was initially granted semi whole sellers licence for kerosene on 27/07/1992 which was renewed up to 31/12/2003. It is the case of the Petitioner that he had filed the application for renewal on 29/12/2003. It appears that the

Petitioner was prosecuted for the offence under the Essential Commodities Act in Summary Criminal Case No. 1605/2003 in respect of which he was acquitted by the learned Judicial Magistrate First Class, Rajura by judgment and order dated 13/02/2007. It seems that in view of the criminal prosecution against the Petitioner, the Petitioner was not supplied the kerosene after 30/03/2009 and no order for renewal of the Petitioner's licence was passed. It further appears that on 30/03/2009 the District Supply Officer, Chandrapur Respondent No. 2 had communicated to the Tahsildar, Jivti, District Chandrapur Respondent No. 3 that till the licence is renewed, the supply of kerosene to the Petitioner should be stopped. The Petitioner had challenged the said order dated 30/03/2009 passed by the District Supply Officer, Chandrapur i.e. the Respondent No. 2 by filing appeal before the Hon''ble Minister, Food, Civil Supplies and Consumer Protection, Government of Maharashtra. It was the case of the Petitioner that for the no renewal of licence, he could not be faulted with, as he had already filed the application for renewal on 29/12/2003. In so far as the aspect of renewal of licence, after the period is over, is concerned, the same is governed by the Government Resolution dated 29th September, 2004. It was the case of the Petitioner that since he had applied for renewal of licence on 29/12/2003, there was no question of application of the said Government Resolution dated 20/09/2004.

4. The revision application filed by the Petitioner came to be heard by the Hon''ble Minister, Food, Civil Supplies and Consumer Protection, Government of Maharashtra and by the impugned order dated 25/07/2010 came to be allowed as mentioned herein above. The Petitioner is aggrieved by the directions contained in clause No. 3 of the said order, which is reproduced herein under.

By imposing the fine in respect of the delay, in accordance with Government Resolution dated 29092004, from 010194 till the receipt of application for renewal of i.e. 29122003 and by forfeiting the security amount, the license may be renewed.

5. The reading of the said clause No. 3 ex facie demonstrates that the same appears to be contrary to the observations made by the Hon''ble Minister, Food, Civil Supplies and Consumer Protection, Government of Maharashtra. It is recorded in paragraph No. 5 of the said order that the Petitioner had submitted the application to the District Supply Officer, Chandrapur Respondent No. 2 on 29/12/2003, which application was filed along with the revisional application filed by the Petitioner before the Hon''ble Minister, Food, Civil Supplies and Consumer Protection, Government of Maharashtra. It is also recorded that the Tahsildar, Rajura in his letter dated 28/02/2005 has stated that the Petitioner was supplied kerosene till February 2005. In the teeth of the said facts, the direction as contained in paragraph No. 3 to impose fine on the Petitioner from 01/01/1994 till the receipt of the application for renewal dated 29/12/2003 and for forfeiting the security amount, in my view, were prima facie unwarranted and unjustified. The learned Assistant Government Pleader on instructions fairly states that the

issue as regards the imposition of fine and forfeiture of security amount may be directed to be considered by the District Supply Officer, Chandrapur Respondent No. 2.

6. In the context of the facts narrated herein above, the direction contained in clause No. 3 of the impugned order is therefore set aside. The District Supply Officer is directed to consider the issue of imposition of fine and forfeiture afresh, taking into consideration the fact that the Petitioner had applied for renewal of licence on 29/12/2003, as also considering the fact that the Tahsildar, Rajura by his letter dated 28/02/2005 has stated that the Petitioner was supplied kerosene till February, 2005 and after considering the said aspects, the District Supply Officer, Chandrapur Respondent No. 2 is directed to pass appropriate orders in respect of fine and forfeiture. It is clarified that the directions contained in paragraph Nos. 1, 2 and 4 to 6 of the impugned order are maintained.

7. In so far as the fine and forfeiture are concerned, it would be open for the District Supply Officer, Chandrapur Respondent No. 2 to pass appropriate orders in that behalf. The District Supply Officer, Chandrapur Respondent No. 2 is directed to carry out the aforesaid exercise within a period of one month from the receipt of the copy of the instant order.

8. Rule is accordingly made absolute in the aforesaid terms. The parties to bear their own costs.