
(2014) 12 MP CK 0025

In the Madhya Pradesh High Court

Case No : Writ Petition Nos. 4720 and 5171 of 2014

Sunder Lal Sahu

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 08-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Essential Commodities Act, 1955 — Section 3, 3(2)(d), 5(3)

Citation : AIR 2015 MP 15

Hon'ble Judges : A.M. Khanwilkar, C.J.; Sanjay Yadav, J

Bench : Division Bench

Advocate : D.K. Dixit, Learned Counsel, Advocate for the Appellant; P.K. Kaurav, Learned Additional Advocate General, Advocate for the Respondent

Judgement

1. Heard counsel for the parties.
2. Essentially two substantive reliefs have been claimed in these petitions as originally filed.
3. The first relief is to quash the impugned order dated 26.02.2014 (Annexure P-6) issued by the Commissioner, Food Civil Supplies and Consumer Protection, Government of M.P. The second relief is a consequential relief to issue direction to the respondents to allot kerosene to the petitioners and other hawkers possessing Hawker cards in the city of Bhopal for sale under the M.P. Kerosene Dealers Licensing Orders, 1979.
4. As regards the main relief, during the pendency of this petition, the same has become infructuous. Inasmuch as, the State Government has now issued communication dated 10.11.2014 under the signature of Deputy Secretary, Food Civil Supplies and Consumer Protection, Government of M.P. dated 10.11.2014 (Annexure A-6). As a result of that communication, the petitioner has moved application to amend the writ petition and challenge the same. We would proceed on the basis that the amendment as prayed is allowed and the petition stands

amended to that effect.

5. The background in which the challenge has been set up, is that, the petitioners and several other persons have been issued Hawker Cards under the M.P. Kerosene Dealers Licensing Orders, 1979. The said Order was amended in the year 1995, pursuant to which definition of "Hawker Card Holder" came to be inserted by way of Order 2 Clause (k). The said definition envisaged that the dealer, who is not wholesaler or semi wholesaler or retail dealer is covered under the said definition. After coming into force of the said Order on 26.01.1996, Hawker Cards were issued to the persons such as petitioners throughout the State of M.P. On the basis of the said Hawker Card, the dealers were supplied around 200 litres Kerosene, who, in turn, engaged themselves in distribution of Kerosene on retail basis in open market. However, the State Government by communication dated 26.02.2014 decided to withdraw the said arrangement and instead decided to distribute the Kerosene only through Public Distribution Scheme (PDS) operating across the State. As aforesaid, originally the said communication dated 26.02.2014 (Annexure P-6) was challenged in this petition and during the pendency of this petition, the State Government having issued instructions on 20.11.2014 to discontinue the distribution of kerosene through Hawker Card Holders and for that the Order of 1979 has also been amended by deleting Order 2 (k) defining Hawker Card Holders, even this communication is now challenged.

6. As aforesaid, we would proceed on the basis that the petitioners have amended the petition and are permitted to challenge the recently issued communication (Annexure A-6) under the signature of Deputy Secretary, Food Civil Supplies and Consumer Protection. The challenge to Annexure A-6, is, firstly, on the ground that the said communication has been issued under the signature of Deputy Secretary of the Department, whereas the amendment vide Order 2 (k) effected on 26.12.1995 and which came into force from 26.01.1996, was issued in the name of Governor. In other words, the Deputy Secretary has had no authority to issue communication to discontinue the arrangement of distribution of Kerosene by the Hawker Card Holders in force on account of amendment effected in the year 1996 by insertion of Clause 2 (k) in the year 1979. This argument is completely in ignorance of the Notification issued in the Official Gazette in the name of Governor dated 09.10.2014 (Annexure A-5). The communication, Annexure A-6, is, essentially, founded on the said Notification. That notification has been issued in the name of Governor, whereby Clause 2 (k), which was inserted in the Order of 1979 came to be deleted. As a result of that deletion, the class of Kerosene distributors operating as Hawker Card Holders has been abolished. That is the effect of the said decision taken by the Governor to delete Order 2 (k) defining Hawkers Card Holders. In that case, the petitioners and similarly placed persons cannot claim any right in the matter of distribution of kerosene as Hawker Card Holders any more. No such class of distributor exists in terms of Order of 1979.

7. To get over this position, Shri Dixit, learned counsel for the petitioners contends that the delegation of authority in terms of Section 3 of the Essential Commodities Act, 1955, is circumscribed; and in terms of Section 3 (2) (d) the authority to be delegated to the State Government can be only for regulating by licenses, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of, any essential commodity. He submits that by virtue of Section 5 (3) of the said Act, this limited power can be delegated to the State Government. He has then invited our attention to Order No S.O. 681 (E) dated 30th November, 1974 issued by the Central Government and which is referred to in the Notification dated 09.10.2014 issued by the State Government. According to him, it is not open to the State Government to interdict the scheme enunciated by the Central Government regarding distribution of Kerosene in the State; and further the State Government is obliged to distribute kerosene to all the Ration Card Holders. The fact that such right exists in the Ration Card Holders in the State with corresponding obligation of the State to ensure distribution of Kerosene to those persons, as per their entitlement and the scheme enunciated by the Central Government cannot create any right in favour of the petitioners, who have claimed reliefs in the present writ petition on the assertion that they are entitled to receive specified quantity of Kerosene from the State Government as Hawker Card Holders. As aforesaid, the dispensation of distribution of Kerosene through the Hawker Card Holders has been completely abolished by the State Government; and, more particularly, as a consequence of Notification dated 09.10.2011, Annexure A-5, and the consequential communication issued by the Deputy Secretary on 10.11.2014, Annexure A-6. The petitioners are not in a position to demonstrate that they have a subsisting right in terms of any other provision either under the Act of 1955 or Orders issued thereunder by the Central Government from time to time.

8. Indeed, the counsel for the petitioners made a feeble attempt in pointing out the Order issued titled - "The Kerosene (Restriction On Use and Fixation of Ceiling Price) Order, 1993. While referring to the definition of parallel marketing system in Order 2 (i) of this Order read with Order 7, it was argued that the State Government is obliged to allow distribution of kerosene through mode other than Public Distribution System and for which reason the reliefs as claimed by the petitioners deserve to be accepted. We fail to understand as to how these provisions in the Order of 1993 will come to the aid of the petitioners to substantiate their reliefs, unless it is pointed out that the same recognizes distribution of Kerosene by the mode of Hawker Card Holders. Hence, even this submission does not commend to us.

9. The definition of parallel marketing system does not recognize distribution of kerosene by the mechanism of Hawker Card Holders, but, is a completely different dispensation. Suffice it to observe that the petitioners have no subsisting right whatsoever so as to direct the State Government to continue to supply kerosene to the petitioners as Hawker Card Holders and to authorize them to engage in retail sale of Kerosene in open market in the concerned area. In

absence of any legal right, the question of entertaining these petitions much less to grant any relief to the petitioners in exercise of writ jurisdiction under Article 226 of the Constitution of India does not arise. Hence, none of the reliefs claimed by the petitioners can be taken forwarded.

10. It may be apposite to now deal with the argument of the petitioners that the State Government had no authority to delete the entry of Hawkers Card Holder as inserted in the Order of 1979 - as it would be in the teeth of the distribution scheme envisaged by the Central Government. If this argument is taken to its logical end, it would necessarily follow that even the amendment of 1996 whereby the definition of Hawkers Card Holder came to be inserted will have to be treated as without authority of law. In which case, the petitioners cannot succeed in getting reliefs as prayed - sans any subsisting right to engage in the business of retail sale of kerosene.

11. Shri Dixit, learned counsel for the petitioners was at pains to persuade us to take the view that discontinuation of the dispensation of retail sale of Kerosene through Hawker Card Holders would severely impact the distribution of Kerosene within the State and that the petitioners in public interest are entitled for a direction against the State to ensure that the State Government distributes Kerosene quota allotted to the State by the Central Government, in its entirety to the Ration Card Holders.

12. We do not intend to venture into this area in absence of any material facts, that the State Government is abdicating its duty in distribution of kerosene to the Ration Card Holders. As and when that position is substantiated, appropriate relief against the State can be considered by this Court.

13. Taking any view of the matter, therefore, these petitions must fail and are hereby dismissed.

14. The interim relief granted by this Court is vacated forthwith.