

(2010) 08 CAL CK 0124
In the Calcutta High Court
Case No : F.M.A. No. 1441 of 2009

The District Controller, Food and Supplies, Nadia and Another	APPELLANT
Vs	
Rajesh Biswas and Others	RESPONDENT

Date of Decision : 02-08-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 08 CAL CK 0124

Hon'ble Judges : J.N. Patel, C.J.; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Arabinda Chatterjee and Mr. Pinaki Banerjee, for the Appellant; Debabrata Saha Roy, for the Respondent

Final Decision : Allowed

Judgement

J.N. Patel, C.J.—This appeal is preferred by the original respondents aggrieved by the decision of the learned single Judge in Writ Petition No. 28286 (W) of 2006, wherein by judgment and order dated 30.03.2007 the original respondents have been directed to ensure that the petitioner is able to distribute the superior kerosene oil to his tagged ration card holders viz., consumers, within 24 hours from the date of communication of this order.

2. The original petitioners filed writ petition under Article 226 of the Constitution of India seeking a direction in the Court against the respondents to allow the petitioner to distribute kerosene oil to his tagged ration card holder from his F.P. Shop being F.P. Shop No. R-(II)-9 and to grant kerosene oil dealership licence to the petitioner for distributing kerosene oil to his tagged ration card holders and to allow the ration card holders tagged with the petitioner's F.P. shop to lift their allotted quota of ration articles including kerosene oil from F.P. Shop and for other ancillary reliefs. The original petitioner is a MR Dealer under P.S. Dhantala, Ranaghat Sub-Division, District - Nadia. It is the case of the petitioner that although he is a fair price shop owner of the concerned area he has been only allowed to distribute food grains to his ration card holders and his tagged ration

card holders have been forced to lift their allotted quota of kerosene oil (subsidised blue kerosene oil) from the other persons, who are holding licence under the provisions of West Bengal Kerosene Control Order, 1968 (hereinafter referred to as the "said Control Order, 1968"). It is the case of the petitioner that as the petitioner holds a MR dealership for distribution of ration articles and P.D. commodities to the ration card holders, he is entitled to be allotted quota of kerosene oil for its distribution to a ration card holder to its preferred shop. This contention of the petitioner is based on the provisions of Public Distribution System (Maintenance & Control) Order, 2003 (hereinafter referred to as the "said order, 2003"), which provides that unless a person holds a licence under the said order, 2003 for running a fair price shop he cannot be permitted to distribute kerosene oil as the same is also essential commodity under the Essential Commodities Act, 1955 and, therefore, though the petitioner is having licence under the provisions of the said Order, 2003, he has been confined to distribute only food grains such as rice, wheat, sugar and edible oil excluding kerosene oil and, therefore, the authorities should be directed to allow the petitioner to distribute kerosene oil to his tagged ration card holders from his fair price shop and he should be granted kerosene oil dealership licence to distribute kerosene oil to tagged ration card holders.

3. On the other hand, it is the contention of the appellant/original respondent that the petitioner cannot be permitted to distribute kerosene oil unless and until he obtains a licence under the said Control Order, 1968. It is contended on behalf of the appellant/original respondent that the said Control Order, 1968 regulates the distribution of kerosene by Oil Companies and it has not been repealed. A person holding a licence of dealership under the said Order, 2003 by itself cannot claim to supply kerosene to ration card holders tagged to his ration shop. It is contended by the appellant/ original respondent that as distribution of kerosene oil is governed by the said Control Order, 1968 as amended in 2003, kerosene being a specific goods a specific licence is required to be taken under the appropriate control Order being the said Control Order, 1968 and without such a licence the respondent (original petitioner) cannot claim for allocation of kerosene quota for the purpose of distribution to kerosene card holders and, therefore, the impugned order passed by the learned single Judge cannot be sustained in law and deserves to be quashed and set aside. After hearing the parties the learned single Judge found that the petitioner has a right to distribute the kerosene oil to the consumers as a MR Dealer, as he holds a valid licence and directed the appellant/original respondent to ensure that the petitioner is able to distribute kerosene oil to tagged ration card holder.

4. We have heard the learned counsel for the parties and examined the provisions of the said Control Order, 1968, Public Distribution System Control Order, 2001, Kerosene (Restriction on Use and Fixation of Ceiling, Price) Order, 1993, Public Distribution System Control Order, 2001, West Bengal Public Distribution System (Maintenance & Control) Order, 2003.

5. The only point that arises for consideration is whether a person holding a licence under the West Bengal Public Distribution System (Maintenance & Control) Order, 2003 for running a fair price shop is entitled for allocation of quota of kerosene oil for distribution of essential commodities under the Essential Commodities Act, 1955 to the ration card holder tagged to his fair price shop without having any valid licence under the said Control Order, 1968. It is not a matter of dispute that the petitioner is a MR dealer and as such, for supply and distribution of the essential commodities under the Public Distribution System Control Order, 2001 is entitled to distribute ration articles from fair price shop such as rice, wheat, sugar, edible oil, including kerosene oil etc., but that by itself does not enable him for allocation of kerosene quota for distribution of subsidised kerosene to the ration card holder tagged to his fair price shop.

6. The said Control Order, 1968 regulates the maintenance of supplies and for securing the equitable distribution and availability at fair prices of kerosene in West Bengal. Paragraph 4 of the said Order, 1968 imposes a ban on trading kerosene without licence unless a person is in possession of a valid licence issued under this order. Paragraph 5 of the said Order, 1968 provides for grant of licence to agent. Paragraph I I of the said order, 1968 governs issue of delivery order or permit and paragraph 12 provides for compliance with conditions of licence and directions, general or special. Paragraphs 4, 5, 11 and 12 reads as under:

"4. Ban on trade in kerosene without licence. - After such date as the State Government may specify by notification in the Official Gazette, not less than 60 days from the date on which his Order comes into force, no person other than an oil distributing company shall carry on trade in kerosene unless he is in possession of a valid licence issued under the Order.

5. Grant of licence to agent. - (1) The Director may grant a licence to any agent in West Bengal authorising him to carry on trade in kerosene as such agent.

(2) A licence granted under sub paragraph (1) shall be in Form A and shall be subject to such conditions as are specified therein and such other conditions as the Director may lay down from time to time in the interest of fair distribution of kerosene within the State.

(3) No agent shall sell, supply or transfer kerosene to any person other than a dealer duly licensed under paragraph 6 of this Order, or a holder of a permit or delivery order issued under paragraph II of this Order.

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11. Issue of delivery order or permit. - (1) The Director or the District Magistrate having jurisdiction may issue a delivery order or permit requiring an agent within his jurisdiction to supply kerosene to -

(a) a dealer, or

(b) other person or establishment requiring kerosene for his or its own

consumption,

in any particular area, if in the opinion of the Director or the District Magistrate, as the case may be, this is considered necessary, or

(c) an agent.

[(2) No person other than an oil distributing company, an agent or a dealer shall transport kerosene or store kerosene or shall have in his possession kerosene exceeding ten litres at a time except under and in accordance with a permit issued by the Director or the District Magistrate having Jurisdiction].

12. Compliance with conditions of licence and directions, general or special. - (1) Every agent or dealer or hawker shall comply with such conditions as may be specified in the licence granted and also with such general or special directions as may from time to time be given to him by the Director or the District Magistrate having jurisdiction for the purpose of giving effect to the provisions of this Order.

[(2) Without prejudice to the exercise of the power conferred by sub paragraph (1), such directions may, subject to the provisions of this Order provide for -

(a) the manner and form in which an agent or a dealer shall maintain the accounts and registers and shall submit the returns or reports required to be maintained and submitted by him;

(b) the regulation of distribution of kerosene, as may be required in the exigencies of circumstances prevailing in a particular area at any time which may, inter alia, include -

(i) fixation of a minimum quota of kerosene per family per month in any area depending on the availability thereof;

(ii) linking of family/individual ration cards against dealers under this Order;

(iii) distribution of kerosene on production of family/individual ration cards;

(iv) issue of special quota to any institution, establishment requiring kerosene for its own consumption.]"

7. Therefore, it can be seen that the aforesaid provisions of the said Control Order, 1968 clearly provides for the regulation and distribution of kerosene even to ration card holder. It appears that the learned single Judge proceeded to pass the impugned order without taking into consideration the said Control Order, 1968, which governs trading kerosene including its distribution to the ration card holder through a dealer who posses a licence tinder the said Control Order, 1968 and, therefore, unless and until a fair price shop owner (MR dealer) obtains a licence under paragraph 6 of the said Control Order, 1968, he is not entitled for allocation of kerosene quota for distribution of kerosene oil to the ration card holder tagged to his fair price shop. The directions issued by the learned single Judge to the appellant/original respondent to ensure that the petitioner is able to

distribute kerosene oil to his tagged ration card holder cannot be sustained in law and deserves to be quashed and set aside.

8. The contention of the petitioner/original respondent that kerosene oil can only be distributed through fair price shop under the Public Distribution System as provided under West Bengal Public Distribution System (Maintenance & Control) Order, 2003 is correct, but it is subject to the fair price shop owner applying to the licensing authority for dealership under the said Control Order, 1968. In the present case, the petitioner has applied to the District Magistrate for grant of licence under the said Control Order, 1968, but without obtaining the same has approached the Court. In the circumstances, the petitioner/original respondent was only entitled to get limited relief against the licensing authority to consider the application of the fair price shop owner for grant of kerosene oil dealership licence for the purpose of distributing kerosene oil to his tagged holder in accordance with law. Therefore, we quash and set aside the impugned judgment and order.

The appeal is allowed. There will be no order as to costs.

Bhaskar Bhattacharya, J.

9. I agree.