

(1985) 02 MP CK 0033
In the Madhya Pradesh High Court
Case No : M.P. No. 729 of 1983

Virendra Singh

APPELLANT

Vs

Collector, District Indore and Others

RESPONDENT

Date of Decision : 18-02-1985

Acts Referred:

Constitution of India, 1950 — Article 226
Essential Commodities Act, 1955 — Section 3

Citation : (1986) JLI 722

Hon'ble Judges : P.D. Mulye, J;K.K. Verma, J

Bench : Division Bench

Advocate : V.S. Kokje, for the Appellant; S.M. Jain, Dy. Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

P.D. Mulye, J.—The petitioner who runs a petrol pump in the name and style of M/s Gee Jay and Company, at Subhash Marg, Indore has filed this petition under Art. 226 of the Constitution in the matter of M. P. Motor Spirit and High Diesel Oil (Licensing and Control) Order, 1980 made under the Essential Commodities Act, 1955 for quashing the order Annexure D which was communicated to the petitioner on 23-7-83 by Annexure-E whereby out of the security deposit made by the petitioner a sum of Rs. 1000/-was ordered to be forfeited.

2. The facts giving rise to this petition which are no longer in dispute, may be stated, in brief, thus; The petitioner is a partner of the firm M/s Gee Jay and Company which has obtained a license under the said Order for running a petrol pump where only petrol is sold. On 31st May 1983 some Food Inspectors had carried out checking of the petitioner's petrol pump. However, they noted following infirmities :

(1) Out of 677 liters of petrol sold, bills were found issued for 106 liters of petrol only; and

(2) The duplicate of bills issued did not bear the names and addresses of customers and dates.

According to the petitioner he immediately pointed out on the spot to the checking party that with effect from 15-4-83 the M. P. Motor Spirit and High Speed Diesel Oil (Licensing and Control) Order, 1980 stood amended and it was no more obligatory on the dealer to issue receipts or invoice for every sale of motor spirit.

3. However, on the basis of the checking report a show cause notice was issued to the petitioner on 20th June 1983, Annexure-B wherein it was stated that the alleged irregularities amounted to violation of condition No. 8 of the license issued under the said Order and cl.6 of the Essential Commodities (Price Display and Price Control) Order 1977. The petitioner was, therefore, asked to show cause why his license may not be suspended or cancelled and why the security deposit lying with the Government be not confiscated.

4. The petitioner submitted his reply to the show cause notice that under the law it was not necessary to issue a receipt or invoice unless demanded in case of sales of motor spirit as per annexure-C dt. 4-7-83. However, the Collector by the impugned order Annexure-D which is said to be dt. 11-7-83 and communicated to the petitioner on 25-7-83 by Annexure-E ordered forfeiture of the security deposit of the petitioner on the ground that the bills were not found in proper order. The petitioner has, therefore, filed this petition with a prayer that the impugned order being illegal and against the provisions of the said licensing order be quashed and set aside.

5. The respondents have contested the petitioner's case though it appears that they have not considered the amendment made in the said Licensing Order which are quoted below :

Notification No. 2782-6830 XXIX 2-82 dt. 15th April, 1982. In exercise of the powers conferred by S. 3 of the Essential Commodities Act 1955 (No. 10 of 1955) read with Government of India, Ministry of Industry and Civil Supplies (Department of Civil Supplies and Cooperation) Order No. S. O. 681-E. dt. the 30th Nov. 1974 the State Government hereby makes the following amendments in the Madhya Pradesh Motor Spirit and High Speed Diesel Oil (Licensing and Control) Order 1980 namely.

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(b) for conditions 8 and 9 the following conditions shall be substituted, namely :

8 (i) The licensee shall except when specifically exempted by the State Government, by the Director of Food and Civil Supplies, Madhya Pradesh in this behalf, issue to every customer a correct receipt or invoice as the case may be, in respect of sale of high speed diesel oil giving his own name, address" and the name, address and diesel card number (if any) of the customer, the date of transaction, the quantity sold, the rate and the total price charged and shall keep

a duplicate of the same to be available for inspection on demand by the licensing authority or any officer authorised by it in this behalf and shall also obtain signature of the buyer on the duplicate copy of the receipt or the invoice, as the case may be.... It shall not be necessary to issue a receipt or invoice, unless demanded, in case of sale of motor spirit.

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Notification No - 460?-2669-XXIX-II-83 dt. 30th July 1983. In exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955 (No. 10 of 1955) read with the Government of India Ministry of Industry and Civil Supplies (Department of Civil Supplies and Cooperation) Order No. SC 681-E dt. the 30th Nov. 1974 the State Government hereby makes the following amendment in the Madhya Pradesh Motor Spirit and High Speed Diesel Oil (Licensing and Control) Order 1980, namely :

Amendment In the said order, in Form "B" condition 8 shall be renumbered as clause (i) thereof and after clause (i) as so renumbered, the following clause shall be inserted namely :

(ii) The licensee shall keep the counterfoils of duplicate of the receipts or invoices referred to in condition (i) in the form of a book available for inspection.

6. According to the amendment it is clear that condition No. 8 applies only to the sale of high speed diesel oil and not to the sale of petrol and this amended provision has been completely overlooked by the respondents. The learned Dy. Government Advocate, therefore, in fairness submitted that he was not in a position to support the impugned order in view of this amended provision which clearly does not apply to the case of the petitioner who only sells petrol at the pump and does not sell any diesel much less any high speed diesel oil. However, the learned Dy. Government Advocate submitted that under S. 16 of the said Licensing Order the petitioner ought to have availed the remedy of appeal by filing an appeal before the Commissioner of the Division within a period of 30 days of the date of receipt by him of the order of the Licensing Authority. Thus, submission, no doubt, has some force as ordinarily the petitioner ought to have availed of this remedy. But it is also clear that this petition was filed on 9 8-83 before the expiry of the period of limitation and the petition having been entertained and having been heard on merits we are of opinion that it is now not desirable and proper to dismiss the same on that technical ground especially when now it is clear that the impugned order has been passed in clear violation of the amended provisions of the said Licensing Order and thus it was illegal and without jurisdiction.

7. In the result this petition succeeds and is allowed. The impugned orders Annexure-D and Annexure ? are quashed and set aside being void and without jurisdiction. However, considering the facts and circumstances of the case the parties are directed to bear their respective costs of this petition. The outstanding amount of security deposit on verification be returned to the

petitioner in person.