

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Pronounced on: 9.01.2009

+ W.P. (C) 2913/2007

ANIL K.OIL DEPOT Petitioner
Through: Mr. Apurb Lal, Advocate.

versus

ASST.COMMISSIONER (E) FOOD &
SUPPLIES OFFICE Respondent
Through: Mr. Darpan Wadhwa, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

S.RAVINDRA BHAT, J. (ORAL)

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Issue Rule. Learned counsel for the respondents waives notice of Rule. With consent of counsel, the matter was heard for final disposal.

2. The petitioner seeks a direction for quashing of order dated 3.4.2007 whereby an appeal under Clause 8 (6) of the Delhi Kerosene Oil (Export and Prices) Control Order, 1962 (hereafter called "the Control Order") was rejected and the order of the Assistant Commissioner dated 18.6.2003 was affirmed.

3. The petitioner was sanctioned a Kerosene Oil Depot (KOD) on 23.6.1981

in the reserved category and a license was subsequently issued on 7.9.1981. On 17.4.86 he requested the Food and Supplies Office for transfer of license in regard to the KOD in favour of his wife and furnished certain documents. This indicated a change of constitution of the proprietorship firm. Apparently, the request was because the petitioner was appointed as Nursing Orderly with the Government of NCT of Delhi on 22.5.1986. After joining the post he requested the respondent (by an application dated 6.6.1986) to induct his wife as partner in the firm. No action was taken; the petitioner sent a reminder in February, 1991. It is claimed that on 27.9.2002, the respondent renewed the license for a period of two months; similar action was taken by letter dated 28.11.2002.

4. It is alleged that the respondent, despite repeated requests, did not take any action, but on 19.4.2003, temporarily attached the card holders of the outlet, to another KOD. The petitioner felt aggrieved and thus approached the Commissioner. In these circumstances, the respondent authorities cancelled the license by an order dated 18.6.2003. The said order reads as follows: -

“Shri Anil Kumar, Prop. M/s Anil Kumar KOD Lic. No.2316/81 is hereby informed that his application for transfer of his KOD license in favour of his wife Smt. Raj Bala, after getting Govt. Job has been considered by the Department and has been rejected on the ground that no change in constitution is to be allowed subsequently once allotment has been made in favour of one except in case of the inheritance as per Departmental policy in which cases the outlets may be transferred to the successors/legal or natural heirs. The request of the KOD holder is not covered under the said departmental guidelines.

Therefore, I, C.M. Dhingra, Asstt. Commissioner (East) Food & Supplies Department, Delhi being the Licensing Authority in exercise of the power conferred upon me under the provisions of Delhi Kerosene Oil (E&P) Control Order, 1962, do hereby cancel the license

with immediate effect.”

5. The petitioner preferred an appeal to the Financial Commissioner against the above order. The relevant part of the Financial Commissioner's reasoning is as follows:

“The impugned order dated 18.6.2003 has disposed of the application of the appellant seeking transfer of his KOD license in favour of his wife Smt. Rajbala and has rejected it on grounds that no change in constitution is allowed, except in case of inheritance as per departmental policy. It is clear that the impugned order has been passed on ground that the Control Order does not have a provision which covers such a request. The appellant has relied upon an order passed by Commissioner, Food & Supplies dated 22.8.86 (Appeal No.116/86) where the issue relates to the Fair Price Shop which was sanctioned in favour of one Sh. Anil Kumar, who subsequently inducted his brother Sh. Parveen Kumar as his partner. After this was approved, at a much later date the said Sh. Anil Kumar obtained employment in a bank. That the Commissioner, Food & Supplies had allowed the said Sh. Parveen Kumar to continue running of the FP S under these circumstances. The present case however is not a parallel to the cited case on two grounds; the order relied upon has indicated that the brother was a blood relation and secondly the brother had become a partner in running the FPS, long before the original holder/licensee obtained employment. In the present case, the documents placed on record show that the appellant had sought a change in constitution and a transfer of the license to his wife on grounds that he had been offered employment. I have gone through the provisions of the Control Order where Clause 6 (2) clearly provides that if the Commissioner (Food & Supplies) is satisfied with the terms and conditions of a license or any directions issued under Clause 3 (d) or any other provision of the Control Order are contravened in a manner that cancellation of the license is called for, the license can be cancelled after giving the licensee a reasonable opportunity of stating his case against the proposed cancellation. I have also gone through the departmental circular of 4.7.03 which relates to action being taken against the licensees and where also, cancellation has been mentioned to be done only after giving a reasonable opportunity of being heard. The departmental policy enumerated through an order issued by respondent on 17.6.02 shows the change in constitution is allowed only in case of death of licensee to the successor, legal heirs or natural heirs, under certain specified

terms and conditions of eligibility. Admittedly the present case is not whether the licensee had either contravened the terms and conditions of the license or whether action was proposed to be taken because the licensee had erred. This is a simple matter where the licensee had sought a change in the constitution of the proprietary firm and had desired that the license should be transferred in the name of his wife. The departmental policy in this regard is very clear and since this was not a case where change was being sought by virtue of the death of the licensee/authorized holder of the license, no relief could have been granted. Simultaneously the appellant being a licensee had obtained individual employment elsewhere and he was repeatedly insisting for change in proprietorship of the concern and transfer of the license in the name of his wife. The impugned order is clear in content where application for transfer of license of the appellant has been rejected and the change in constitution sought had been refused because there was no provision in the policy to do so. The cancellation of the license is a result of these two action and not in pursuance to any act by the appellant which was in contravention of the provisions of the Control Order.”

6. The petitioner contends that the respondents’ action, in refusing to transfer the license by not permitting the reconstitution of the firm, is arbitrary. It was contended that the respondent was duty bound to grant a fair opportunity to the petitioner before cancelling the license. Being guilty of inaction for about 17 years, the respondent could not have all of a sudden and without prior notice decided to cancel the license. It was contended that the respondent could not have applied a subsequent policy where change in constitution of the firm is deemed no ground for transfer. Even assuming such policy change to be relevant, the respondent could not have discriminated against the petitioner because under similar circumstances others were granted licenses as well as change of constitution of the firm.

Reference was made to an order of the Commissioner in Appeal No.116/2006 permitting change of constitution of firm in favour of a blood relative.

7. The respondents rely upon a Circular embodying the departmental policy in such cases issued on 17.6.2002. That reads as follows: -

ORDER

"Sub: Departmental policy and Eligibility terms and conditions for change in constitution in case of death only, for P.D.S. outlets.

Change in constitution will only be allowed in case of death of licensee/authorization holder of PDS outlets to their successors to the legal heirs or natural heirs, who are not gainfully employed, subject to the following terms and conditions of eligibility.

- 1. The applicant should have valid legal and physical possession over the premises.*
- 2. The applicant should be preferably 10th class pass from the recognized board or equivalent and be able to maintain books of accounts. A proof in support of Education Qualification should be attached. This condition is relaxable in special circumstances by CFS.*
- 3. The applicant should not be proprietor or partner of a cancelled PDS outlet nor should be connected in any way with another PDS outlet.*
- 4. The applicant should not have been convicted under the E.C. Act, 1955.*
- 5. The applicant should not be below 18 years of age as on the date of the submitting application.*
- 6. The applicant will abide by the conditions laid down under the Delhi Specified Articles (Regulation of Distribution) Order, 1981 and the Delhi Kerosene Oil (Export & Price) Control Order, 1962 as amended from time to time as the case may be.*

7. *An affidavit that applicant has read all the terms and conditions of license and under takes to abide them, should be attached with the application.*

The application along with the documents required as referred above should be submitted in the concerned circle office within the 30 days of the death of the licensee. The documents submitted along with the application should be valid on the day of submission of application.

In cases where file for change of constitution is pending with CFS office, temporary permission to run the PDS will be allowed by the Asstt. Commissioner, upto 3 months maximum. However, the head-office should be kept informed. Thereafter the file for extension should be sent to CFS office. If the change in constitution/papers are not complete in this period, the file for extension beyond three months should be put up to the CFS."

8. The respondent disputes that the request for change of name or constitution was made in 1986; they allege that such a request was made for the first time in 1997 and that since the rules did not permit transfer of license, the decision to cancel the existing KOD license is not arbitrary. It is further submitted that with the issuance of the order dated 17.6.2002, no one is entitled except in terms of the eligibility conditions spelt out in that document.

9. The facts show a narrow controversy between the parties. The respondents do not dispute that the petitioner was issued a KOD license in 1981. Though the date of the petitioner's request for transfer of license and change in constitution of the firm has been disputed, other circumstances

relating to the request are not in dispute. The petitioner was issued an appointment to a public post in 1986 which necessitated his applying for transfer of KOD license. Simultaneously he asked for re-constitution of the firm. It appears that no action was taken on the request for 17 long years. Apparently, the KOD continued to function without any hindrance. It was only in 2002 when the respondents renewed the license for short spells of a few months; that the petitioner approached them for action on his request. The license was then cancelled on 18.6.2003.

10. Now, there cannot be any dispute that fairness and non-arbitrariness are unshakeable, cornerstones of the edifice of equality. The question is whether the petitioner can under the circumstances of this case insist that the license, originally issued to him in 1981 should be transferred in favour of his wife. Concededly, the respondent did not formulate any policy with regard to the change in constitution of a firm (or concern) which was allowed to establish and manage a KOD till 17.6.2002. Such gap in policy perhaps widened their discretion enabling grant of such request in certain cases. However, in the opinion of this Court, those instances cannot be treated as precedent upon which the petitioner can found an enforceable claimant.

11. The petitioner was granted KOD at a time when he was unemployed. Although details of the eligibility conditions applicable at the time have not been furnished to the Court, it may be reasonable to infer that

lack of the applicant's employment was one criteria which impelled the authorities to issue licenses. In any event, the petitioner was under a compulsion to divest himself of the license upon taking up public employment under the State. He, therefore, requested for "change in the constitution of the firm" as a prelude to transfer of the license. No policy, rule or regulation permitting such transfer or empowering the applicant to assert such or a similar claim was brought to the notice of the Court. Yet the petitioner's request was not rejected, it languished and the KOD was allowed to function for 17 long years. When he again pressed for the transfer, the respondent cancelled the license on an application of the order/Circular dated 17.6.2002.

12. The Court is of the considered view that in the very nature of things, KOD is a license largesse conferred upon the State to individuals upon fulfillment of validly spelt out criteria. Its continuation, grant and transfer are all aspects which can be fully regulated by the licensing authority. In exercise of such executive power, the Commissioner framed guidelines contained in the order dated 17.6.2002 spelling out the circumstances where change in constitution of the firm is permissible. The essential pre-requisite for consideration of such application is death of licensee or the authorization holder; the other crucial aspect is that natural heirs of such persons who are not gainfully employed are alone entitled to consideration. After all having regard to the object of the scheme which is at

once to ensure distribution of essential commodities as also provide employment, the formulation of such a criteria and its non-discriminatory application as in the present case is in consonance with the principle of equality under Article 14 of the Constitution of India. The respondents cannot be faulted for applying the criteria; in this case plainly the petitioner's request could not have been acceded to.

13. For the above reasons, the Court is of the view that there is no infirmity in the impugned order. The Writ Petition is accordingly dismissed. No order as to costs.

**S. RAVINDRA BHAT
JUDGE**

JANUARY 09, 2009
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