

\$~

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

+ W.P.(C) 1095/2008 & 2146/2008

% **Judgment delivered on 08.01.2014**

M/S.MADAN LAL PAWAN KUMAR Petitioner
Through: Mr.Kishan Nautiyal, Advocate

versus

GOVT. OF N.C.T. OF DELHI & ORS. Respondent
Through: Mr.S.D. Salwan and Ms.Latika Dutta, Advs

CORAM :-

HON'BLE MR. JUSTICE G.S. SISTANI

G.S.SISTANI (ORAL)

1. Rule. With the consent of counsel for the parties, present petition is set down for final hearing. Necessary facts for disposal of this petition are that the petitioner, M/s.Madan Lal Pawan Kumar was issued a licence (licence No.1783/77) for distribution of kerosene oil. The said Kerosene Oil Depot (KOD) is situated at Block No.6/499, Khichripur, Delhi under circle 38. The petitioner firm is a licence holder for distribution of kerosene oil since 1977, a copy of the licence has been placed on record. On 28.04.1995 an inspection staff of the respondent came on a routine inspection to the depot of the petitioner firm. At that time, the father of the present proprietor, late Sh.Madan Lal was running the kerosene oil depot. Upon inspection of the depot, on account of allegation of shortage of 1233 litres of kerosene oil for the period 1.4.1995 to 28.4.1995, an FIR was registered. On 07.06.1995 the Assistant Commissioner (East) suspended the licence of M/s.Madan Lal Pawan Kumar on the basis of the

said report. On 16.08.1995, Assistant Commissioner (Judicial) after considering the facts and circumstances of the case as also the materials placed on record, revoked the order of suspension and imposed a penalty of forfeiture of the security amount on the ground that actual shortage of kerosene oil was 68 litres, which was well within the permissible limit and not on the higher side.

2. In the meanwhile in the proceedings initiated upon filing of the FIR for prosecution of the offences under the Delhi Kerosene Oil (Export and Price) Control Order 1962, the Additional Sessions Judge vide his judgment dated 03.04.2001 convicted the father of the present proprietor and sentenced him to undergo imprisonment till rising of the court and also imposed fine of Rs.2,000/-.
3. It is the case of the petitioner that even after conviction, the father of the present proprietor of the petitioner firm continued to run the Kerosene Oil Depot, till 24.02.2006. Sh.Madan Lal (previous proprietor of the petitioner firm) expired on 24.2.2006. In June, 2006 the present proprietor of petitioner firm applied for change of name of proprietor in the licence of Kerosene Oil Depot, due to his father's death. The Assistant Commissioner vide order dated 13.06.2006 allowed the change of name and the present proprietor of the petitioner firm was directed to deposit an amount of Rs.5,000/- towards security of the Kerosene Oil Depot. It is only on 17.08.2007 that a show cause notice was issued by the Assistant Commissioner, as to why authorization may not be cancelled under clause 6 (3) of the Delhi Kerosene Oil (Export and Price) Control Order 1962. Reply to the show cause notice was filed on 30.08.2007. Respondents being dissatisfied with the reply so received passed an order dated 01.09.2007, cancelled the licence of the present proprietor. The appeal filed against the aforesaid order was also dismissed.

4. It is submitted by counsel for the petitioner that the act of the respondents of cancelling the licence of KOD after such a long period is unjustified, in light of the fact that the respondents had earlier in 2006 allowed the change of the proprietor's name. It is also submitted that no action survives against the present proprietor, as the same is stale and the act of the previous proprietor stands condoned, as the show cause notice was issued after a gap of more than 6 years and during this period the licence was renewed from time to time, moreover in the name of the present proprietor as well. The second argument of the counsel for the petitioner is that once the Assistant Commissioner (Judicial) vide its order dated 16.08.1995 had revoked the order of suspension and imposed a penalty of forfeiture of the security amount, punishment for the same offence cannot be imposed again and that too on the present proprietor, who has no connection with the offence committed by the previous proprietor.
5. *Per contra*, Mr.Salwan, counsel for the respondent submits that once the original licence holder had committed breach and was convicted the respondents were well within their right to take action in terms of Clause 6 of Delhi Kerosene Oil (Export and Price) Control Order 1962 dated 5.12.1962, which reads as under:

“6. Contravention of the terms and conditions of licence:

- (1) If any licensee or his agent or servant or any other person acting on his behalf contravenes any of the terms and condition or directions or any provisions of this order then without prejudice to any other action that may be taken against licensee according to law, his licence can be suspended by order in writing by the Commissioner.

Proviso to clause 6(1) order vide Dt. 15.2.80.

- (2) Without prejudice to the provisions of sub-clause 1 if the

Commissioner is satisfied that the licensee has contravened any of the terms and conditions of a licence or the directions issued under clause 3-D or any provision of this order and cancellation of his licence is called for, may after giving the licensee a reasonable opportunity of stating his case against the proposed cancellation by order in writing cancel his licence and shall forward a copy thereof to the licensee.

- (3) Notwithstanding anything contains in this clause, where a licensee is convicted by a court of law for breach of the terms and conditions of the licence or contravention of the provision of this order the licensing authority may by order in writing, cancel his licence.

Provided that no such order shall be passed until the appeal, if any, filed against such conviction is dismissed and where no such appeal is filed until the period of limitation for filing an appeal expires.”

6. With respect to the submissions made by counsel for the petitioner for delay, counsel for the respondent submits that the delay is procedural, as in the period of 18 years, 24 Assistant Commissioners had been transferred in one zone, and in another zone 12 Assistant Commissioners were transferred in 10 years.
7. In response to the above, the counsel for the petitioner stated that in case the respondents were to rely upon Clause 6 of Delhi Kerosene Oil (Export and Price) Control Order 1962, the same should have been invoked by them within the shortest span of time from the date of the cause of action and in any case within a reasonable period of time. It is further contended that on account of gross delay in taking action, the respondents are estopped from relying on Clause 6 of Delhi Kerosene Oil (Export and Price) Control Order 1962, which would be deemed to have been given up by the respondents, by virtue of their conduct; and on the contrary, vested rights have been created in favour of the petitioner by continuous renewal

of licence, which cannot be taken away at this belated stage.

8. I have heard counsel for the parties and also perused the petition as also the annexures filed along with the petition.
9. In this case, father of the present proprietor was issued a licence for distribution of kerosene oil. On an inspection having been carried out shortage was found, which resulted in suspension of his licence. Subsequently the order of suspension of licence was revoked and a penalty of forfeiture of security deposit was imposed on the father of the present proprietor on the ground that actual shortage of kerosene oil was 68 ltrs., which was well within the permissible limits. A copy of the order dated 16.8.1995 has been placed on record. Operative portion of the order reads as under:

“Hence, I Z.U. Siddiqui, Asst. Commissioner, Food & Supplies Dept. in exercise of powers conferred upon me under the provision of Delhi K. Oil (Export & Price) Control Order 1962, do hereby order forfeiture of entire security amount of Rs.100/- (One hundred rupees only) which should be deposited by the licensee within one week after the receipt of the order. The suspension order dated 7.6.95 is revoked and the K.oil Licence No 1783/77 held by M/s Madan Lal Pawan Kumar shall stand restored on depositing the forfeited amount of security. The licensee is also warned to be more careful to avoid reaccurance (sic. reoccurrence) of such irregularities. However, this order is passed by the undersigned without prejudice to any action / decision that shall be taken by the competent court in case of FIR lodged against the Depot holder.”

10. In the meanwhile, an FIR was also lodged against the father of the present proprietor; and by a judgment dated 3.4.2001, he was convicted and sentenced to undergo imprisonment till rising of the Court, besides imposing fine of Rs.2000/-.
11. The present proprietor applied for change of name of proprietorship, upon

death of his father which was permitted and the present proprietor continued to run his Kerosene Oil Depot since then. On 17.8.2007 a show cause notice was issued to the present proprietor as to why the authorization be not cancelled under Clause 6(3) of the Delhi Kerosene Oil (Export and Price) Control Order 1962. Reply to the show cause notice was filed. Being dissatisfied with the response of the present proprietor, the licence was cancelled.

12. In this case, admittedly on the administrative side the Assistant Commissioner (Judicial), upon going through the facts of the case revoked the order of suspension of licence and imposed a penalty of forfeiture of the security amount on the ground that actual shortage of kerosene was 68 liters which was well within the permissible limit and not on the higher side.
13. The arguments of counsel for the petitioner can be summarized as under:

- (i) The violation/breach, if any, was committed by the father of the present proprietor and after his demise a fresh licence was issued in favour of the present proprietor, thus the act of his father stands condoned; and secondly, he cannot be made to suffer for the acts of the previous licence holder.
- (ii) Administrative action was already taken against the previous licence holder and a penalty was imposed.
- (iii) The impugned action initiated after almost 12 years, is stale.

14. The argument of counsel for the respondent is that the respondents were well within their rights to initiate action in terms of Clause (6) of the Delhi Kerosene Oil (Export and Price) Control Order 1962 being an

independent action and mere delay by itself cannot be a ground to condone the acts of the petitioner firm.

15. The basic facts are not in dispute that the license was granted to the father of the present proprietor to run Kerosene Oil Depot. Upon inspection having been carried out, some irregularities were found during the lifetime of the father of the present proprietor, who was the licensee then. Resultantly the licence was suspended by the Assistant Commissioner (East) and thereafter the Assistant Commissioner (Judicial), revoked the order of suspension and imposed a penalty of forfeiture of the security amount. It is also not in dispute that as long as the father of the present proprietor was alive, no action was taken against him in terms of Clause (6) of the Delhi Kerosene Oil (Export and Price) Control Order 1962. Thereafter, licence stood transferred in the name of the present proprietor, who is a separate entity, and further the said licence was renewed from time to time. It is only after a gap of more than 12 years fresh show cause notice for cancellation of the KOD was issued and the licence was cancelled as according to the respondents, previous licensee had incurred a disqualification having been convicted by a criminal court, in terms of the 1962 Order.
16. Admittedly, action was taken by the Assistant Commissioner against the father of the present proprietor and a penalty of forfeiture of security amount was imposed. No further administrative action was taken against the petitioner firm for more than 12 years. Thus in my view no action lies at such a belated stage and that too against the present proprietor of petitioner firm for the act committed by the previous licence holder. Even otherwise having not taken any administrative action for 12 years and on the contrary having renewed licence of the petitioner firm from time to time would amount to condoning the act of the wrong doer; and after 12

years, the respondents are estopped from taking action against the petitioner firm having waived off their rights by their own conduct. The Government must act in a fair, just and expeditious manner. The delay and inaction on the part of the respondent has resulted in creation of valuable rights in favour of the petitioner firm.

17. It is settled law that a statutory authority is required to act reasonably, fairly and expeditiously.
18. The respondents have not only slept over their right, but also there is no reasonable and plausible explanation for the gross delay, and, thus, the respondents waived their right for taking any action against the petitioner firm. Moreover, the respondents by agreeing to transfer the licence in the name of the present proprietor of petitioner firm have condoned the act of the previous licence holder of the petitioner firm; further, the respondents have given a reasonable belief to the present proprietor that his right and title is good and shall not be disturbed, hence, the licence of the present proprietor cannot be cancelled for the acts of the previous licensee.
19. Counsel for the respondent has placed reliance upon the report of Justice Wadhwa Committee constituted by the Supreme Court of India. In the light of the aforesaid facts and observations, respondents cannot at this stage get benefit of their inaction or the findings of the report.
20. In view of the aforesaid, present proprietor of the petitioner firm cannot be penalized, at this stage even more so since the published act was never committed by the present license holder. A party is bound to act reasonably more so a statutory authority. The authority was under a duty to act reasonably and without prejudice to the rights of the petitioner. Given that the authority has itself renewed the licence of the petitioner firm, they themselves have condoned the earlier conviction. Further by not acting within a reasonable period of time and by agreeing to renew the

licence in the name of the present proprietor of the petitioner firm, respondents have given him a reasonable cause to believe that a right has accrued in his favour.

21. Taking into consideration the fact that on the administrative side the respondents had decided to revoke the suspension of licence of the petitioner firm and only imposed a penalty of forfeiture of the security amount and thereafter despite the order of conviction no action was initiated by the respondent against the petitioner firm during the lifetime of the previous licence holder i.e. Sh.Madan Lal, the action of the respondents amounts to condoning the offence committed and by their action the respondents have themselves decided to resort to a lesser punishment on the petitioner. Accordingly, the impugned order of cancellation is quashed.
22. Rule is made absolute. Petition and the application stand disposed of in above terms. Parties shall bear their own costs.

G.S. SISTANI, J.

JANUARY 08, 2014

'ssn'