

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

+ **W.P.(C) 8606/2007 & CM No.16222/2007**

% **Judgment delivered on 08.01.2014**

MIGLANI KEROSENE OIL DEPOT Petitioner

Through: Mr.R.P. Luthra, Advocate

versus

GOVT. OF NCT OF DELHI & ORS Respondent

Through: Mr.S.D. Salwan and Mr.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.Miglan Kerosene Oil Depot was issued a licence No.2302/81 for distribution of kerosene oil. The said Kerosene Oil Depot was being run from the premises bearing No.50 Mansarovar Park, Shahdara, Delhi. The petitioner firm is a licence holder for distribution of kerosene oil since 1981. The proprietor of the petitioner firm (Kanhaiya Lal) died on 02.10.2003 and upon his death, his wife Smt. Leela Kumari (the present proprietor of the petitioner firm) stepped into his shoes and carried on the affairs of M/s.Miglan Kerosene Oil Depot, after taking prior permission from respondent. The necessary amendments were also carried out in the official record of the respondents to this effect. In support of this, counsel for the petitioner has relied upon the office order dated 30.12.2003 bearing No.FAC/NE/F & S/2003/5281 by which the licence was transferred in the name of the present proprietor of the petitioner firm.
2. Counsel for the petitioner has contended that thereafter the licence of the

petitioner firm was renewed from time to time, till 09.09.2008. A categorical submission has been made on behalf of the petitioner that since taking over of the depot by Smt.Leela Kumari, upon demise of her husband (Sh.Kanhaiya Lal), there has been no complaint whatsoever against the petitioner. However, in September, 2007, the present proprietor of the petitioner firm was served with a show cause notice, based on a conviction order passed against the husband of the present proprietor under the Essential Commodities Act, in the year 1994, as to why the licence of the petitioner be not cancelled. The present proprietor submitted reply to the show cause in which it was stated that at the time when the order of conviction was passed, the petitioner firm was under the control and supervision of Sh.Kanhaiya Lal (the deceased husband of the present proprietor) and she had no knowledge regarding conviction and fine. However, the respondents did not accept the explanation tendered by the present proprietor and by order dated 15.11.2007 respondent no.2 cancelled the licence of the petitioner with immediate effect, which led to filing of the present petition.

3. It is submitted by counsel for the petitioner that the impugned order suffers from unreasonableness, non-application of mind and is arbitrary. It is also submitted that similarly situated persons had approached this court by filing writ petition bearing No.4030/2006, which was allowed *primarily* on the ground that reliance on stale material could not be justified and action was arbitrary. It is thus contended that the cancellation proceedings based on order of conviction passed against the husband of the present proprietor in the year 1994, should have been initiated/ passed by the respondents within a reasonable period of time and not after a span of 13 years.
4. It is submitted by counsel for the petitioner that the action of the

respondents of cancelling the licence of KOD after a long period is unjustified, in light of the fact that the respondents had allowed the change of the proprietor's name. Even otherwise after issuing a fresh licence in the name of the present proprietor, the respondent by their conduct have condoned the act of the deceased, Sh. Kanhaiya Lal. It is also submitted that no action survives against the present proprietor, as the same is stale and the act stands condoned in light of the fact that the show cause notice was issued after a gap of more than 13 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 previous proprietor has been convicted, the petitioner firm cannot be punished twice for the same offence.

5. Mr.Salwan, learned counsel for the respondent has opposed the present petition on the ground that once the order of conviction had been passed, the respondents were well within their right to cancel the licence of the petitioner firm, in terms of Clause 6 of Delhi Kerosene Oil (Export and Price) Control Order 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. Counsel for the respondent submits that once the previous proprietor had committed breach and was convicted the respondents were bound to cancel the licence of the petitioner firm.
7. I have heard counsel for the parties and also perused the petition as also the annexures filed along with the petition. The basic facts are not in dispute that business of the petitioner firm, M/s.Miglani Kerosene Oil Depot was initially carried out by late Sh. Kanhaiya Lal and he was granted a licence as far back as in the year 1981. The order of conviction in this case against Sh.Kanhaiya Lal was passed in the year 1994. It is also not in dispute that Sh. Kanhaiya Lal expired on 02.10.2003 on which date the order of conviction had already been passed. It is undisputed that as long as the husband 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. However, the respondents who were aware of the order of conviction, at that stage, decided to ignore the same and allowed his wife, Smt.Leela Kumari (the present proprietor of the petitioner firm) to step into the shoes of her husband; and upon her request, the respondents carried out necessary amendments and issued subsequent licence and renewed the same from time to time in favour of Smt.Leela Kumari (the present proprietor of the petitioner firm), who is a

separate entity. It is only after a gap of more than 13 years, show cause notice for cancellation of the KOD was issued and the licence was cancelled as according to the respondents, petitioner had incurred a disqualification having been convicted by a criminal court, in terms of the 1962 Order.

8. Admittedly, no action was taken against the petitioner firm for more than a period of 13 years. Thus in my view no action lies against the present proprietor of petitioner firm for the act committed by the previous licence holder. Even otherwise having not taken action for 13 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 13 years, the respondents are estopped from taking action against the petitioner having waived off their rights by their own conduct. The Government must act in 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.
9. It is settled law that a statutory authority is required to act reasonably, fairly and expeditiously. 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 petitioner 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.
10. 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.

11. 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, 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, the respondents have given her a reasonable cause to believe that a right has accrued in her favour.
12. Taking into consideration the fact that the respondents decided to transfer the licence in the name of the present proprietor of the petitioner firm, and despite the order of conviction no action was initiated by the respondent against the petitioner during the lifetime of the previous licence holder i.e. Sh.Kanhaiya Lal, the action of the respondents amounts to condoning the offence committed. Accordingly, the impugned order of cancellation is quashed.
13. 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
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