

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1904 OF 2002

1. Chandrakant Tukaram Firode .. Petitioners
Deceased through his legal heirs
1A] Nandkumar s/o. Chandrakant Firode,
Age.50 years, Occ. Business,
R/o. Malhar Chowk, Station Road,
Ahmednagar.
2. Sandya Magasvargiya Mahila Audyogik
Sanstha Ltd.
Through its Chairman
Sow. Sangita Ashok Thokal
Age. 27 years, Occ. Business,
R/o. Annabhau Sathe Vasahat,
Maliwada, Ahmednagar.
3. Shaikh Shabbir Ahmed
Age. 45 years, Occ. Business,
R/o. Station Road, Ahmednagar.
4. Shri Arun s/o. Haribhau Abhave
Age. 32 years, Occ. Business,
R/o. Tilak Road (Station Road),
Ahmednagar.
5. Sow. Vimalbai Chandrakant Firode,
Age. 50 years, Occ. Business,
R/o. Station Road, Ahmednagar.
6. Ekviramata Mahila Audyogic Utpadak
Co-operative Ltd., Through its
Chairman Sow Meena Prakash Hapse,
Age. 35 years, Occ. Business,
R/o. Station Road, Ahmednagar.

Versus

1. The State of Maharashtra .. Respondents
2. The Hon'ble Minister,
Food and Civil Supply
and Customer Protection
Mantralaya, Bombay.
3. District Supply Officer,
Ahmednagar, Dist. Ahmednagar.
4. Sudhir s/o. Motilal Kale,
Age. 35 years, Occ. Business,
R/o. Jathar Niwas, Barudgaon Road,
Ahmednagar.
5. Ganesh s/o. Amrut Kale,
Age. 33 years, Occ. Business,
R/o. Bhushan Nagar, Kedgaon,
Tq. & Dist. Ahmednagar.
6. Manoj s/o. Mahadeo Kale,
Age. 35 years, Occ. Business,
R/o. Nalini Niwas,
Kale Galli, Burudgaon Road,
Ahmednagar.

Mr. V.S. Bedre, Advocate for the petitioner.

Mr. D.V. Tele, A.G.P. for respondent/State.

Mr. R.B. Dhaware h/f. Mr.U.S. Malte, Advocate for
respondent Nos. 4 to 5.

Mr. V.P. Raje h/f. Mr. C.R. Deshpande, Advocate for
respondent Nos. 6.

**CORAM : A.V. NIRGUDE &
A.M. BADAR, JJ.
DATED : 19.06.2015**

ORAL JUDGMENT [PER : A.M.BADAR,J.] :-

1. This petition raises a challenge to directions of Respondent No.2-Revisional Authority for issuance of retail kerosene license to respondent Nos.4 to 6. Kerosene is an essential commodity under the provisions of the Essential Commodities Act, 1955. The Maharashtra Kerosene Dealers Licensing Order, 1966 deals with regulation of trading of kerosene. A person desirous of trading in kerosene is required to make an application for issuance of license under Clause 4 of the said order of 1966. No trading of kerosene can be done without having a license and except in accordance with the terms and conditions of license issued by the Licensing Authority in pursuance to the Licensing Order of 1966. The respondent-State has issued several resolutions in

terms of the Licensing Order of 1966, which deals with procedure for issuance of retail license for trading in kerosene.

2. By the instant petition, the petitioner is challenging orders dated 18.04.2002 passed by Respondent No.2-Revisional Authority directing granting of retail kerosene license to respondent Nos.4 to 6 as a special case.

3. We heard the learned Counsel appearing for the petitioner. By drawing our attention to the Government Resolution dated 16.08.2001 (Exh. "B"), he contended that seeking license for retail distribution of kerosene, the State is obliged to issue an advertisement inviting application from the public at large for seeking the license for retail distribution of kerosene. According to learned Counsel for the petitioner, in the case in hand, without there being any advertisement, respondent

Nos.4 to 6 directly approached Respondent No.3-District Supply Officer for grant of license for retail distribution of kerosene. He further argued that though the District Supply Officer rightly rejected the applications moved by respondent Nos.4 to 6; in revision, respondent No.2 has directed the District Supply Officer to issue retail kerosene license to respondent Nos.4 to 6 with a further direction to allot appropriate quota to them. This action, according to learned Counsel for the petitioner, is high-handed, arbitrary and illegal.

4. Mr. Raje, Advocate h/f. Mr. Deshpande, learned Counsel appearing for respondent No.6 tried to justify impugned orders by contending that as per G.R. dated 09.05.2000, the power and authority for issuance of license for distribution of kerosene without following due process as laid down in GR dated 16.08.2001 is with the State Government and respondent No.2 has rightly exercised the power. According to him impugned orders are

passed considering the report of the concerned officer, which shows that there are no retail dealers in the locality for which respondent Nos.4 to 6 had applied for retail license. Hence, according to learned Counsel appearing for respondent No.6 impugned action is perfectly justified. The learned Counsel appearing for respondent Nos.4 & 5 also adopted the same arguments.

5. Learned A.G.P. appearing for the State contended that power to grant license for retail distribution of kerosene as a special case in terms of Government order dated 09.05.2010 and the power conferred under the said orders were exercised by the State while granting license to respondent Nos.4 to 6.

6. We have carefully perused the provisions of the Maharashtra Kerosene Dealers Licensing Order, 1966 as well as Government Resolution dated 16.08.2001 (Exh. "B") which provides for the procedure prevalent at the

relevant time for grant of retail distribution license of kerosene. The Government Resolution dated 16.08.2001 and more particularly clause 2 (d) thereof prescribes that as and when the State is required to issue new license for retail distribution of kerosene, necessary advertisement must be issued in the news-paper having largest circulation in the area, where license is required to be issued. The public at large was entitled to make necessary applications for grant of license in terms of said advertisement. The Government Resolution further provides that while granting license, preference should be given to the category of applicants mentioned therein. The Sub-Divisional Officer is authorized to issue license after examining the application received in pursuance of the advertisement. Obviously, this procedure is envisaged to maintain transparency and in order to see that all eligible persons gets an opportunity to participate in the process of allotment of dealers license.

7. Apart from this regular procedure for issuance of retail distribution license of kerosene, by issuing order dated 16.05.2000 the State Government has taken care of the contingency when there is an urgent need to issue license in order to prevent inconvenience to the public at large. This Government Order dated 16.05.2000 found at page No.44 of the record clearly provides that in rainy season or in famine like situation, following the routine procedure of issuance of an advertisement for seeking applications for dealership license may cause delay and consequent inconvenience to the general public. In such contingency the State is empowered to issue retail distribution license of kerosene bypassing procedure of inviting applications from the public at large in terms of the Government Order dated 16.05.2000. Thus, for public convenience the State Government can issue retail distribution license of kerosene directly to the concerned person provided that there is exceptional urgency due to rainy season or famine like situation.

The object of such order is not to favour the applicant, but to see that general inconvenience to the public at large in difficult situation is avoided. It is in such situation following the routine procedure is exempted.

8. In the light of this procedure adopted by the State for issuance of license for retail distribution of kerosene, let us examine the case in hand. In the instant case, respondent No.4-Sudhir s/o. Motilal Kale made application for issuance of license for retail distribution of kerosene to Ahmednagar Railway station area. In similar manner, respondent No.5-Ganesh s/o. Amrut Kale applied for Kedgaon area and respondent No.6-Manoj s/o. Mahadeo Kale applied for Burudgaon area. All these applications were submitted without there being an advertisement inviting applications for issuance of retail distribution license for kerosene. These applications of respondent Nos.4 to 6 came to be rejected by the District Supply Officer with a reason that only

State Government can issue license without calling applications and that too as a special case.

9. Dissatisfied with the order of the District Supply Officer rejecting their applications respondent Nos.4 to 6 preferred revision applications before Respondent No.2-Hon'ble Minister for Food, Civil Supplies and Consumer Protection. These revisions were heard after calling report from the Civil Supplies Department. Perusal of the impugned order shows that the Civil Supply Department gave a report that the area for which the retail distribution license was sought by respondent Nos. 4 to 6 is lacking kerosene dealers and for that area license for retail distribution of kerosene can be issued. Considering this report, the Revisional Authority allowed revision petitions by orders impugned in this petition with a direction to issue retail distribution kerosene license in favour of respondent Nos.4 to 6.

10. We are at pains to mention that the Revisional Authority ought not to have decided revision petitions in such casual and high-handed manner without examining the factual foundation of the case in order to determine whether the case falls in the category of special case as envisaged by the Government Order dated 09.05.2000. As clarified in foregoing paragraph the Government Order dated 09.05.2000, provides that retail distribution license can be granted as a special case only in order to avoid inconvenience to the public at large and that too at the time of rainy season and famine like situation. These relevant aspects were not at all kept in mind by the Revisional Authority while allowing revision petitions of respondent Nos.4 to 6. There was nothing on record to show that because of rainy season or famine like situation the general public was facing hardship in getting kerosene at Ahmednagar and Burudgaon area and there was likelihood of undue delay in supply of kerosene in the eventuality of following the due procedure by

issuing an advertisement. By granting retail distribution license of kerosene to respondent Nos. 4 to 6 without following the prescribed procedure the Revisional Authority has adopted perverse and high-handed approach thereby preventing all desirous and eligible persons from moving applications and competing for seeking license for retail distribution of kerosene. The impugned order nowhere discloses the reasons for arriving at a conclusion that the applications of the respondent Nos. 4 to 6 fall under the special case. There is no reason in the impugned order as to why an advertisement inviting applications need not be issued and why general public should be prevented from making applications for grant of license. In nutshell impugned orders are examples of arbitrary and high-handed exercise of power for distributing the State largess by the Revisional Authority. As such, they cannot be sustained and therefore the following order :-

O R D E R

- i) The writ petition is allowed.
- ii) Impugned orders dated 18.04.2002 allowing revision petitions filed by respondent Nos.4 to 6 thereby granting them license for retail distribution of kerosene as special case are quashed and set aside.
- iii) Rule is made absolute accordingly with no order as to costs.

[A.M. BADAR,J.]

[A.V. NIRGUDE,J.]