

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

WP(C).No. 32104 of 2008 (V)

PETITIONER :

**SULOCHANA SANKAR, W/O.LATE SRI.SANKAR
BRINDAVAN, NEAR STATE BANK OF INDIA
KOOTHUPARAMBA, KANNUR DISTRICT**

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENTS :

- 1. STATE OF KERALA, REP. BY SECRETARY TO
GOVERNMENT, FOOD AND CIVIL SUPPLIES DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. COMMISSIONER OF CIVIL SUPPLIES,
KERALA CIVIL SUPPLIES CORPORATION,
THIRUVANANTHAPURAM.**
- 3. DISTRICT COLLECTOR, MALAPPURAM**
- 4. TALUK SUPPLY OFFICER, TIRUR.**

BY SENIOR GOVERNMENT PLEADER SRI. K.K. SAIDALAVI

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 23-09-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

APPENDIX

PETITIONER'S EXHIBITS :

- P1: COPY OF THE AUTHORIZATION APPOINTING SRI. P.M. RASHEED AS THE
MANAGER OF THE PETITIONER.
- P2: COPY OF ORDER NO. (CS) A8-7005/2007 DT 2/11/2007 OF THE R2.
- P3: APPEAL FILED BY THE PETITIONER BEFORE THE R1 UNDER SEC.12 OF THE
KERALA KEROSENE CONTROL ORDER.
- P4: NOTES OF ARGUMENT ALONG WITH DOCUMENTS FILED BY THE
PETITIONER'S COUNSEL BEFORE THE R1 IN THE HEARING ON P3 APPEAL.
- P5: ORDER CHALLENGED VIZ. G.O.(RT) NO. 277/2008/F&CSD DT 11/7/2008.
- P6: NOTICE ISSUED BY THE TSO TIRUR WITH THE NO. CS 2-1024/97 DT 10/9/2008.
- P7: COPY OF THE VIGILANCE ENQUIRY REPORT DT 31/12/2005 SUBMITTED
BY THE PETITIONER.
- P8: COPY OF THE DOCUMENT ISSUED BY THE R3 DT 2/5/2006.
- P9: COPY OF G.O. (RT) 27/2005/FCS & CAD DT 29/1/2005.

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.A.TO JUDGE

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A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.32104 of 2008

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Dated this the 23rd day of September, 2015

JUDGMENT

The petitioner is challenging Ext.P5 passed by the first respondent in an appeal filed by the petitioner against Ext.P2 order issued by the second respondent by which, the order of the third respondent, District Collector, cancelling the licence in the name of the petitioner under Kerosene Control Order was upheld.

2. The petitioner is a widow of a defence person, who died in harness. On that ground, she was having a licence for running a kerosene wholesale depot at Tirur. The licence was granted as early as in 1974 and she was running the depot under the name and style “M/s. Sree Krishna Kerosene and Oil Stores” at Tirur. The petitioner alleges that she being a widow, the depot was managed with the aid of a helper by name Mohammed Rasheed, whom she later appointed as the manager from 1990 onwards. She further alleges that at the instigation of some others, who wanted to set up

their own business, instigated the third respondent, who issued proceedings dated 25.5.2005 by which the authorisation issued to the petitioner to run kerosene wholesale depot was suspended based on three irregularities. She was issued with a memo of charges stating the alleged three irregularities to which four other charges were later added. Thereafter the licence of the petitioner was cancelled.

3 The petitioner filed appeal before the Commissioner of Civil Supplies, the second respondent, which was disposed of by Ext.P2. The petitioner again preferred an appeal before the first respondent under Section 12 of the Kerala Kerosene Control Order which was disposed of by Ext.P5 upholding the findings of the lower authorities. It is with this background, the petitioner has come up before this Court.

4. In the detailed counter affidavit filed by the respondent State, it was contended that the petitioner was running a business through a benami by name Mohammed Rasheed as revealed through the vigilance enquiry. According to them, the petitioner

was conducting the depot without any valid storage licence and reduction in the stock was detected at the time of inspection. They justified the order passed by the District Collector suspending and cancelling the licence as well as the subsequent appellate orders.

5. The petitioner has filed a reply affidavit along with certain additional exhibits.

6. Arguments have been heard.

7. It is relevant to note that suspension of the licence by the District Collector as per order dated 25.5.2005 was passed on the following three alleged irregularities:

- (i) The Storage Licence No.19/11 issued under the provisions of Petroleum rules had not been renewed after 31-12-1997.
- (ii) Distribution of Kerosene Oil without a valid storage licence under Petroleum Rules, after 1-1-1998.
- (iii) The KWD had distributed 109600 litres of Kerosene Oil to the fishing permit holders against the actual requirement of 93935 litres of Kerosene Oil (ie; 50% of the Kerosene Oil sanctioned to the permit holders) and misappropriated 15665 litres of Kerosene Oil by falsification in accounts of the KWD. The KWD had been directed in writing on 18-4-2005 by Taluk Supply

Officer, Tirur to issue only 50% of the actual quantity of the fishing permits.

8. However, in the memo of charges, the following were also added:

- (iv) The licensee failed to lift and distribute the Kerosene Oil in time. During April, 2005 she had lifted the stock from the company on 25-4-2005 and distribution completed only on 30-4-2005. Hence the distribution of Kerosene Oil to the card holders extended upto 3-5-2005.
- (v) She had produced the monthly accounts of the KWD only on 4.5.05 instead of 1-5-05. at the time of implementation of the order of the District Collector, on 26-5-2005 the following irregularities were also noticed.
- (vi) Licensee or authorised salesman was not present at the depot.
- (vii) Storage of 9198 litres of Kerosene Oil (As per records the closing balance stock as on 26-5-2005 was 11928 litres. But the physical stock was only 2730 litres in 13 barrel). Moreover it was reported that the licensee purposefully filled water in 37 barrels instead of kerosene for misleading the officials.

9. The learned counsel for the petitioner would argue that the first charge that the petitioner's licence No.19/11 issued under the provisions of the Petroleum Rules had not been renewed after

31.12.1997 is belied by the document issued by the third respondent on the application made by the petitioner under the Right to Information Act. The documents marked along with Ext.P4 stand ample testimony to the fact that the first charge would not lie. Evidently and admittedly too, the validity of the petitioner's licence expired on 31.12.1997. The same could be renewed only after obtaining storage licence.

10. Ext.P4(6) [at page (29) of the W.P(C)] is the reply received from the District Collector, Malappuram which shows that the licence was not renewed because of the delay on the part of the Tahsildar in filing the reply within the stipulated time. It also reveals that the storage licence has not been cancelled from the office of the District Collector. It is also evident from Ext.P4(8) [at page (31) of the writ petition] that the District Collector had sent a letter to the petitioner to remit the fees for renewal of licence. Ext.P4(9) [at page (32) of the writ petition] is the acknowledgment for receipt of money dated 13.10.2003. These documents would indicate that the petitioner has applied for renewal of storage

licence and the storage licence in the name of the petitioner has not been cancelled at all. The delay in renewing the licence was not on account of any laches on the part of the petitioner. Therefore, the first charge would fail.

11. Yet another allegation was that [charge no.(iii)] petitioner has distributed more than 50% of the sanctioned kerosene and thus, violated the direction of Taluk Supply Officer. Ext.P6(a) [at page (34) of the WP(C)] is the details regarding supply of kerosene received from the District Supply Officer. The sanctioned kerosene for fishing permit was 187875 litres and half of the same is 93937 litres. However, what was received by the petitioner was only 93810 litres of kerosene which proves that only less than 127 litres of the sanction quantity of kerosene.

12. The next allegation that the petitioner has failed to take stock of the kerosene and to distribute the same to the customers [charge no.(iv)] is also without basis. It was pointed out that the petitioner obtained the stock on 30.4.2005. Due to this, the distribution of kerosene was extended upto 3.5.2005. The definite

case of the petitioner is that she has regularly lifted the stock and kerosene oil was available in the KWD for distribution. However, there was delay in taking the kerosene by ARD's and the Taluk Supply Officer has extended the validity of the time till 3.5.2005. Therefore, it was stated that there was no lapse on the part of the petitioner. I see valid force in the said submission.

13. Regarding charge no.(v), it is revealed from the documents now placed on board that the accounts were produced on 2.5.2005 itself as first May was a holiday. It is evident from Ext.P7 that additional charge no.(vi) also is unsustainable as the Kerosene Control Order does not stipulate that licensee should be present at the depot throughout. The definite case of the petitioner is that Mohammed Rasheed was her helper, who was subsequently appointed as the manager and, therefore, he was the authorised salesman of the depot. It is crucial to note that the petitioner was a widow and she was unable to be at the premises throughout. It is also relevant to note that Ext.P7, which is the report of the enquiry by the vigilance, also does not say that the aforesaid Rasheed was

a benami of the petitioner. As rightly pointed out by the learned counsel for the petitioner, without there being an authorised salesman in the depot, the respondents, who conducted the raid, would not have been enable to take possession of the records as evidenced by the mahazar.

14. Regarding additional charge no.(vii), it is crucial to note that the mahazar dated 26.5.2005 is silent regarding the same. It was added by the Taluk Supply Officer in his report dated 27.5.2005. Had there has been a case as alleged, necessarily, the same ought to have been recorded in the mahazar prepared at the time of the inspection. It is also crucial to note that no sample was taken on 26.5.2005.

15. It was strenuously argued by the learned Senior Government Pleader that the petitioner has not challenged the grant of sub depot to Kunhi Hydru. However, in answer to the said submission, the learned counsel for the petitioner invited my attention to the fact that the petitioner has challenged the same in O.P Nos.15280 and 17093 of 1997 before this Court wherein the

Government was directed to consider the matter afresh. The contention of the Indian Oil Corporation in those cases was that the same is only a sub depot whereas the Government said that it is a new depot. If the same is a new depot it could be opened only after duly advertising the same and calling for applications from the interested and qualified parties. According to the petitioner, aforesaid Hydru is a person against whom, a number of irregularities were found leading to the cancellation of his licence as evident from Ext.P9, which is the copy of the Government order dated 29.1.2015.

16. It is distressing to note that in Ext.P5 none of the argument advanced by the petitioner was considered. The documentary evidence produced along with Ext.P4 which would prove the case of the petitioner were not taken care of. By Ext.P5, the first respondent has simply re-iterated the history of the case and arrived at a finding upholding the orders of the lower authorities without adverting to any of the contentions raised by the petitioner.

17. On a consideration of the materials on record, this Court is of the view that the petitioner is entitled to get the relief as prayed for.

In the result, the writ petition is allowed. Ext.P5 is quashed. It is hereby declared that the cancellation of petitioner's authorisation to run the kerosene wholesale depot at Tirur by the third respondent is not legally sustainable. The respondents are directed to permit the petitioner to continue her KWD No.10 at Tirur in the name "Sreekrishna Kerosene and Oil Stores".

Sd/-
A.VRAMAKRISHNA PILLAI
JUDGE

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