

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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WRIT PETITION No.26259 OF 2011

ORDER:

This writ petition is filed challenging the order dated 06.08.2011 passed by the 1st respondent-Commissioner of Civil Supplies in CCS. Progs.No.E2/3547/2011, whereby confirming the order dated 10.05.2011, of the 2nd respondent-District Collector.

The case of the petitioner is that based on the report dated 20.07.2010 submitted by the 3rd respondent-District Supply Officer, the 2nd respondent-District Collector had issued a show cause notice dated 24.07.2010, to the petitioner with the following charges:

CHARGES:

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1. Sri Cheetirala Bhaskar, Managing Partner, M/s. Chitirala Puliaiah & Sons, Wholesale K. Oil Dealer, Giddalur is allowing one Sri Yekkali Chenchiah to act as a binami dealer to look after the transactions of their business as he could not produced any recorded evidence regarding appointment of Sri Yekkali Chenchiah as manger of the said agency and thus violated Clause 3(B) the Kerosene (Restriction on use and fixation of sealing price) Order 1993.
2. Sri Cheetirala Bhaskar, Managing Partner, M/s. Chitirala Puliaiah & Sons, Wholesale K. Oil Dealer, Giddalur has reportedly indulged in clandestine business with PDS Kerosene by shifting the Kerosene from Tanker AP03-6768 from which the dealer lifted 12 K.L. of kerosene from the Oil Company on 7.7.2010 with invoice No. 640343771 to AP27T-7281 with motor near South Bye-pass Road, Ongole with an intention to divert the same into black market without intimating the competent authority i.e., either oil company or licensing authority and thus violated Cl. 24, 26(2) & 27 of A.P. Petroleum Products (L & RS) Order 1980 and condition 2 of license issued there under.
3. Sri Cheetirala Bhaskar, Managing Partner, M/s. Chitirala Pullaiah & Sons, Wholesale K.Oil Dealer Giddalur kept the tanker bearing No.AP27T-5756 without intimating

the local authorities to cover up the shortage of PDS K.Oil at the agency and also that the F-Form license bearing 719/CAR/96-97 which was lapsed by 31.3.2009 related to AP27T-5756 and thus violated Clause 3(1) and 3(2) of the Kerosene (Restriction on use and fixation of sealing price) Order 1993 and condition 2 of license issued under APPP (L&RS) Order 1980.

4. Sri Cheetirala Bhaskar, Managing Partner, M/s. Chitirla Pullaiah & Sons, Wholesale K.Oil Dealer, Giddalur lifted 12000 liters in Giddalur Mandal and sent Tanker to Markapur town but securing one empty Tanker bearing No. AP27T-5756 from Ongole and shifted the said stock to that tanker in Thurpu Veedhi of Markapur in an unauthorised place which contains 7060 liters on measurement at the time of seizure and the total quantity noticed that the dealer delivered on short measurement and thus failed to maintain true and correct accounts and there by contravened Clause 12(1) (ii) of AP Petroleum Products (L&RS) Order 1980.
5. Sri Cheetirala Bhaskar, Managing Partner, M/s. Chitirala Pullaiah & Sons, Wholesale K.Oil Dealer, Giddalur kept the Tanker bearing No.AP27T-7281 with 5940 liters of Kerosene unauthorizedly at Anjaneya Swamy Temple, Kothapalli village of Giddalur Mandal during the night time which is unauthorized place and the stock is inflammable in nature and also without intimation to the concerned authorities with a *malafide* intention to divert the same into black market and thus violated condition 2 of license issued under AP Petroleum Products (L&RS) Order 1980.

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Subsequently on receipt of the said show cause notice, the petitioner submitted a detailed explanation categorically denying the allegations made by the 2nd respondent-District Collector. After its enquiry and dealing with each of the charges, the 2nd respondent-District Collector, passed an order dated 10.05.2011, holding that the petitioner is guilt of charges. Aggrieved thereby, the petitioner filed an appeal before the 1st respondent-Commissioner of Civil Supplies and after its enquiry, the 1st respondent dismissed the same by his order dated 06.08.2011, confirming the order dated 10.05.2011 of the 2nd respondent. Challenging the same, the petitioner filed the present writ petition.

Heard Sri E. Manohar, learned senior counsel for the petitioner and the learned Government Pleader for Civil Supplies (A.P).

The learned senior counsel for the petitioner while drawing the specific attention of this Court to the averments made in para No.10 of the writ affidavit and corresponding paras in the counter-affidavit filed by the respondents submits that none of the contentions raised by the petitioner dealt with by the respondents while finding the petitioner as guilty of the charges. He further submits that basing on the report dated 20.07.2010 of the District Supply Officer, Ongole, the 2nd respondent-District Collector had issued a show cause notice to the petitioner and the petitioner was not supplied with the copy of the report of the District Supply Officer. The petitioner had raised the contention of non furnishing of the copy of the report of the District Supply Officer before the 1st respondent-Commissioner of Civil Supplies, in his appeal. The learned senior counsel further submits that even assuming for the sake of arguments some of the charges which have been made are taken to be proved, they do not constitute the violation of the clauses of the Control Order 1993. He further submits that so far as the appellate authority is concerned, there is total non application of mind except reiterating the contentions and counter contentions and recording certain of the aspects pointed out by the District Supply Officer in a cryptic manner and there is no consideration of the contentions urged by the petitioner.

On the other hand, the learned Government Pleader for Civil Supplies, while reiterating the contents of counter-affidavit, draws the attention of this Court to Clause 26(2) of the Control Order. She further submits that it is an admitted fact that the petitioner had taken the delivery of the kerosene for distribution in a Tanker bearing No.A.P.27 T 5756, but transported the same through another vehicle bearing No.AP 27 T 7281 and thus violated the Clause 26(2) of the Control Order.

To appreciate the respective contentions of the parties, the specific averments which are made in the writ affidavit may be noticed particularly

para No.10 of the affidavit which reads as under:

“10. I submit that the order of the 1st respondent confirming the order of the 2nd respondent suffers from errors apparent both of facts and law and is liable to be set aside for the following among other **GROUND**S:-

- a) The order of the 1st respondent is mechanical and non-speaking and it has not considered the various submissions made by our Counsel.
- b) The charges levelled and the findings recorded thereon are baseless and unsustainable. The 1st respondent did not all consider the same.

(a) **Charge 1 :** Sri Cheetirala Bhaskar, Managing Partner, M/s. Chitirala Puliaiah & Sons, Wholesale K. Oil Dealer, Giddalur is allowing one Sri Yekkali Chenchaiyah to act as a binami dealer to look after the transactions of their business as he could not produced any recorded evidence regarding appointment of Sri Yekkali Chenchaiyah as manger of the said agency and thus violated Clause 3(B) the Kerosene (Restriction on use and fixation of sealing price) Order 1993.

Clause 3B of the 1993 Order reads as under and it was not violated.

“3B. **Restriction on sale of Kerosene by persons not authorized:-** No person other than the dealer or Government Oil Company or parallel marketer shall sell Kerosene to any person”.

Sri Chenchaiyah has been working as the Manager to the knowledge of the Tahsildar, Giddalur. There is no allegation that either we or Sri Chenchaiyah have sold kerosene to any person other than the FP Shop dealers.

(b) **Charge 2 :** Sri Cheetirala Bhaskar, Managing Partner, M/s. Chitirala Puliaiah & Sons, Wholesale K. Oil Dealer, Giddalur has reportedly indulged in clandestine business with PDS Kerosene by shifting the Kerosene from Tanker AP03-6768 from which the dealer lifted 12 K.L. of kerosene from the Oil Company on 7.7.2010 with invoice No. 640343771 to AP27T-7281 with motor near South Bye-pass Road, Ongole with an intention to divert the same into black market without intimating the competent

authority i.e., either oil company or licensing authority and thus violated Cl. 24, 26(2) & 27 of A.P. Petroleum Products (L & RS) Order 1980 and condition 2 of license issued there under.

The circumstances under which the SKO was transferred from hired TT AP03 T-6768 to our TT AP27 T-7281 have been stated supra. There is no provision in the Control Order that in such circumstances the 2nd respondent should be intimated. Clause 24 has no application and it reads as under:-

“24. Dealer or Trader not to refuse to sell petroleum products:-

No dealer or trader shall refuse to sell the petroleum products available in his premises unless such sale is in contravention of this order or the instruction of the Commissioner or the Collector.

Clause 26(2) also has no application. Clause 26(2) reads as under:-

26. No transport of petroleum products without invoice of Oil Companies:- (1).....

(2) Subject to proviso to Clause 23, no person shall transport the petroleum products in cans or in barrels or in any other container except in accordance with an invoice or sale issued by an oil company by a dealer or in accordance with a permit issued by the collector or an officer authorised by him in this behalf.

The transfer of the balance quantity to our TT would not fail within this sub clause.

Clause 27 reads as under:-

27. Power of Government or Commissioner of Civil Supplies or

Collector to issue Directions:- (1) In the interest of ensuring fair and equitable distribution of the petroleum products it shall be lawful for the Commissioner or Collector to issue directions to dealers, traders owners of oil tankers and consumer outlet owners.”

Condition 2 of the licence issued to the petitioner was also not violated. Condition 2 read as under:-

“The licensee shall carry on the aforesaid business at the following place: D.No.4-9-2, Veerannabhavi Street, Giddalur”.

(c) **Charge 3 :** Sri Cheetirala Bhaskar,

Managing Partner, M/s. Chitirala Pullaiah &

Sons, Wholesale K.Oil Dealer Giddalur kept the tanker bearing No.AP27T-5756 without intimating the local authorities to cover up the shortage of PDS K. Oil at the agency and also that the F-Form license bearing 719/CAR/96-97 which was lapsed by 31.3.2009 related to AP27T-5756 and thus violated Clause 3(1) and 3(2) of the Kerosene (Restriction on use and fixation of sealing price) Order 1993 and condition 2 of license issued under APPP (L&RS) Order 1980.

This charge is baseless. Clauses 3(1) and 3(2) read as under:-

“3. Restriction on use of kerosene supplied under public distribution system:- (1) No person shall use kerosene supplied

under the public distribution system for any purpose other than cooking and illumination. Providing that the Central or State Government may by order permit any person to use kerosene for such other purpose as it may specify in that order.

(2) No dealer appointed under the public distribution system or a transport shall sell, distribute or supply kerosene under the public distribution system to any person other than the person to who the supplies as re meant to.”

There is no allegation in the show cause notice attracting clauses 3(1) and 3(2) and Condition 2 of the licence. Charge No.3 does not fail within the ambit of these clauses or condition. The explanation submitted to this charge was not at all considered either by the 2nd respondent or by the 1st respondent. The mistake was committed by the Tahsildar, Markapur, in the allotment order and the F.P.Shop dealers were not remitting the amounts to the petitioner and the mistake was rectified by proceedings 20/01/2010. However, we could not distribute the SKO to the named FP Shop dealers, as the SKO was seized by that time.

(c)

Charge 4: Sri Cheetirala Bhaskar, Managing Partner, M/s Chitirla Pullaiah & Sons, Wholesale K.Oil Dealer, Giddalur lifted 12000 liters in Giddalur Mandal and sent Tanker to Markapur town but securing one empty Tanker

bearing No. AP27T-5756 from Ongole and shifted the said stock to that tanker in Thurpu Veedhi of Markapur in an unauthorised place which contains 7060 liters on measurement at the time of seizure and the total quantity noticed that the dealer delivered on short measurement and thus failed to maintain true and correct accounts and there by contravened Clause 12(1) (ii) of AP Petroleum Products (L&RS) Order 1980.

This petitioner has not indulged in any short measurement/delivery. No FP Shop dealer or the consumer has ever complained in this regard. Clause 12(1) (ii) is not attracted and was not violated by us. Clause 12(1)(ii) reads as under:-

12 (1) Maintenance of accounts and supplies by dealers:--

- (ii) Every dealer shall maintain true and correct accounts of all purchase and sales of the petroleum products.

- (e) **Charge 5:** Sri Cheetirala Bhaskar, Managing Partner, M/s Chitirala Pullaiah & Sons, Wholesale K.Oil Dealer, Giddalur kept the Tanker bearing No.AP27T-7281 with 5940 liters of Kerosene unauthorizedly at Anjaneya Swamy Temple, Kothapalli village of Giddalur Mandal during the night time which is unauthorized place and the stock is inflammable in nature and also without intimation to the concerned authorities with a malafide intention to divert the same into black market and thus violated condition 2 of license issued under AP Petroleum Products (L&RS) Order 1980.

This charge is baseless and contrary to the record. The circumstances under which the tanker was kept at Anjaneya Swamy Temple have been explained both in the explanation as well as in para 5 supra. The Route Officer was intimated and he has posted the Talari to guard the tanker. Condition 2 of the licence has no application to this charge.

- c) The 2nd respondent in passing the order of cancellation has totally placed reliance on the report dated 20/07/2010 of the District Supply Officer, Ongole, the 3rd respondent herein, without supplying copy thereof to the 1st petitioner and thus violated the principles of natural justice. Hence the order is void. This aspect though raised and argued before the 1st respondent, it was not at all considered."

The allegations which are made in para No.10 of the counter-affidavit filed by the respondents in reply to para No.10 of the writ affidavit, which reads as under:

“Para 10: in reply to this para (a) it is submitted that according to Clause 3-B of the Kerosene (Restriction on use fixation of ceiling price) order 1993, and also clause 22 of Andhra Pradesh Petroleum Products (L,S&R) order 1980 no person other than the dealer shall sell Kerosene to any person and also there is restriction on possession of petroleum products by a person other than a license: But in this case one Sri.Y.Chenchaiah is acting as benami and the petitioner allowed him to handle local transactions related to wholesale dealership by himself only. In this regard the contention of the petitioner that Sri.Y.Chenchaiah is not a benami and he appointed him as a manager to their firm on 05.01.2000 is not true since he has never intimated the same to the licensing authority at any point of time and did not obtain any written permission: Handling of PDS Kerosene by one Sri. Y.Chenchaiah is an unauthorized one and also violation of law.

(b) It is submitted that the petitioner himself admitted that he has shifted kerosene from tanker bearing no. AP03-6768 with invoice no.640343771 from Surareddy Palem and shifted the same to another tanker no. AP27T7281 at south bye-pass Road Ongole. Which is prohibited since the commodity is inflammable in nature. It is also submitted that since the invoice is issued to the tanker No. AP036768 the petitioner is not supposed to transfer the kerosene from one tanker to another tanker which is violation of law clause 26 of Andhra Pradesh Petroleum Products order and also done the same apparently with malafide intention. Hence the contention of the petitioner is not true.

(c)&(d) :- In reply to this paras it is submitted that the petitioner unauthorizedly shifted kerosene oil from the tanker bearing No.AP 27 T 7281 to AP 27 T 5756 and kept the same at Markapur unauthorisedly without intimating any official and if the petitioner has really kept the said tanker for distribution under PDS as contended by him, he has to report the same to the local Tahsildar about arrival of the Tanker for distribution through the route officer but the petitioner has failed to do so.

(e) In reply to this para it is submitted that the contention of the petitioner is not true since at the time of inspection no authorized officials are available with the Tanker but the petitioner kept the kerosene Tanker at Anjaney Swamy Temple unauthorizedly with the stock of PDS kerosene which is inflammable in nature and the petitioner has not intimated any local officials about keeping of the Tanker at unauthorised place. Further it is submitted that copy of panchanama which is basis for framing of the charges against the petitioner has already been served on

him before initiating of disciplinary proceedings against the petitioner.

In view of the foregoing facts, it is requested to pray that Hon'ble High Court to dismiss the writ petition as it deserves no consideration and liable for dismissal."

A perusal of the averments in the writ affidavit and the averments in the counter-affidavit leave no manner of doubt that the 2nd respondent-District Collector had not dealt with any of the specific contentions raised by the petitioner. However, to the extent of the arguments of the learned Government Pleader for Civil Supplies that there is a violation of Clause 26(2) of the Control Order, 1993, deserves to be accepted for the reason that the petitioner admitted that he does not have any independent storage facility and the kerosene was kept in the tanker. Being a wholesale distributor under the relevant contract with the petroleum company and under the Control Order, it is the duty of the petitioner to distribute the kerosene collected from the petroleum companies to various dealers at distribution points. Admittedly, the petitioner also does not have any under ground storage facility. However, he is licensed to store the kerosene in barrels. It is not the case of the petitioner that he had taken the delivery of the kerosene in a vehicle bearing No.A.P. 27 T 5756 for the purpose of storing in barrels. Petitioner had transported the kerosene through vehicle bearing No. A.P 27 T 7281. Though the petitioner had submitted a detailed explanation stating that it is only on account of certain modifications that are required to be carried out as mandated by the petroleum company/authorities temporarily petitioner was using the oil tanker bearing No. A.P 27 T 5756 and as a matter of fact the petitioner had admitted that there is a technical violation of Clause 26(2) of the Control Order. However, it is important to note that while dealing with the explanation submitted by the petitioner, the 2nd respondent did not set out any reasons as to why the explanation submitted by the petitioner with regard to the technical breach, is not required to be considered and whether the transfer of the kerosene from one vehicle to the other vehicle was deliberate and intended for any clandestine purpose. More importantly, the 2nd respondent-District Collector also did not advert to this aspect. If the explanation submitted by the petitioner is accepted, the same may result in a

lenient view being taken for the reason the same is only a technical breach. It may also be noted that there was no finding recorded in the order of the 2nd respondent that the petitioner was indulging in any clandestine activity or misusing the kerosene meant for public distribution. With respect to other allegations, petitioner submitted his explanation stating that there was infact no breach on his part and none of the clauses referred to in the Control Order, have any application. These aspects have not been dealt with in the order of the 2nd respondent-District Collector. In those circumstances, the non speaking order dated 06.08.2011, passed by the 1st respondent-Commissioner of Civil Supplies in CCS. Progs.No.E2/3547/2011, whereby confirming the order dated 10.05.2011 of the 2nd respondent-District Collector, is liable to be set aside and the matter is required to be remitted back to the 2nd respondent-District Collector, for fresh consideration.

Accordingly, the writ petition is allowed setting aside the order dated 06.08.2011, passed by the 1st respondent-Commissioner of Civil Supplies in CCS. Progs.No.E2/3547/2011 and remitted the matter back to the 2nd respondent-District Collector, for fresh consideration after dealing with the contentions raised by the petitioner. It is needless to mention that in the event the petitioner desires to have personal hearing, the same shall also be provided to him. The 2nd respondent-District Collector shall also furnish a copy of the report dated 20.07.2010 of the District Supply Officer, Ongole to the petitioner before proceeding with the hearing. Further, considering the fact that this is a matter pending for more than five years, the entire exercise shall be completed by the 2nd respondent-District Collector within a period of eight weeks from the date of receipt of copy of this order. No order as to costs.

Miscellaneous Petitions pending, if any, in this writ petition shall stand dismissed.

CHALLA KODANDA RAM,J

Date:17.11.2015.

Note: Issue CC in one week.

B/o.

Gk.

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.26259 of 2011

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Date:17.11.2015

Gk

