

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO. 10661 OF 2015

Ashok Amrut Gaikwad **... Petitioner**
Age: 55 years, Occu: Business
R/o Sangavi, Taluka Shirpur
District: Dhule

VERSUS

1. The State of Maharashtra
Through Secretary,
Food, Civil Supplies and
Consumer Protection Department,
Mantralaya, Mumbai 400 032
2. The Hon'ble Minister,
Food, Civil Supplies and
Consumer Protection Department,
Mantralaya, Mumbai 400 032
3. The Deputy Commissioner (Supply)
Nashik Division, Nashik
District Nashik
4. The District Supply Officer, **... Respondents**
Dhule, Taluka Dhule
District Dhule

...
Mr. G. S. Rane, Advocate for Petitioner
Mr. S. N. Kendre, AGP for Respondents State

CORAM : V. K. JADHAV, J.

DATE : 10th February, 2016

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. By consent,
heard finally.

2. The petitioner is a semi wholesale kerosene licence holder and his licence is valid up to 31.12.2018. In view of the change of policy by the Central Government, the quota of kerosene allottable to the petitioner is substantially reduced and consequently, the petitioner has decided to form a partnership firm alongwith other partners for carrying out business of kerosene, motor spare parts and allied products. Accordingly, a partnership firm namely Shaneshwar Oil Depot came into existence, wherein the petitioner and other two persons are the partners.

3. On 10.03.2015, the petitioner filed an application for transfer of his individual licence in favour of the partnership firm, contending therein that he has entered into the said partnership for enhancing his business by carrying business of kerosene, motor spare parts and allied products. By order dated 18.03.2015, the District Supply Officer, Dhule rejected the prayer for transfer of licence on the ground that transferring of individual licence in favour of partnership firm is not permissible. Aggrieved by the same, the petitioner has preferred revision application before the Hon'ble Minister, Food, Civil Supplies and Consumer Protection Department,

Mantralaya, Mumbai. The Hon'ble Minister, by order dated 04.08.2015, has dismissed the said revision. Hence this writ petition.

4. Learned counsel for the petitioner submits that the District Supply Officer has rejected the proposal mainly on the ground that transfer of individual licence in favour of partnership firm is not permissible as per provisions of the Maharashtra Kerosene Dealers' Licensing Order, 1966. The learned counsel submits that the said issue is now settled and even the Hon'ble Minister has also accepted the same, in view of observation made by the Division Bench of this Court in Writ Petition Nos. 5267/97 and Writ Petition No. 5588/97, wherein, it is observed that when there is no ban in the Rules for such a transfer, it will be improper to read such ban of transfer in the Rules. The learned counsel further submits that Respondent No.2 Hon'ble Minister, in its order dated 04.08.2015, observed that the reasons for transfer of licence to the partnership firm are not proper and accordingly dismissed the revision. The learned counsel has pointed out various orders passed by the then Hon'ble Minister, annexed to the petition from Page Nos. 48 to 70, wherein, almost on the same ground,

the then Hon'ble Minister, permitted such transfer of licence from individual to partnership firm. The learned counsel submits that thus, the impugned order passed by the Hon'ble Minister calls for interference.

5. Learned AGP appearing for the respondents submits that the licence was granted to the petitioner under the Maharashtra Kerosene Dealers' Licencing Order, 1966. There is no provision under the said Licencing Order to transfer individual licence in the name of partnership firm and thus, in the absence of such provision, the petitioner's proposal has been rightly disallowed.

6. It appears from the order passed by Hon'ble Minister, in this matter and also in the other matters, as pointed by the learned counsel for the petitioner, that requests for transfer of licence from individual to partnership firm can be considered on its own merits and there is no ban as such in the Rules for such transfer. It appears from the impugned order that the Hon'ble Minister has simply observed that the reasons given by the petitioner for transfer of licence are not proper. However, the Hon'ble Minister has not further elaborated the same, as to why the reasons given by the petitioner are not proper. On the other hand, the petitioner has

contended in his application that due to change in the policy of the Government, the quota of kerosene allottable to the petitioner/individual licence holder is substantially reduced and therefore the petitioner is getting very less income from the said reduced quota and even it is not possible for him to maintain himself and his family on such meager income.

7. It appears from the other cases pointed out by the learned counsel for the petitioner that the then Hon'ble Ministers, from time to time, accepted such revisions in respect of other proposals and accordingly quashed and set aside the orders passed by the District Supply officers and permitted transfer of licences from individual to partnership firm.

8. In the present matter, the petitioner is also one of the partners in the partnership firm and in my considered opinion, the reasons given by the petitioner for transfer of his individual licence in favour of the partnership firm are proper and correct and the Hon'ble Minister should have considered the same as considered in other cases. The impugned order, therefore, certainly calls for interference. Hence following order:

O R D E R

- i. The order dated 18.03.2015, passed by the District Supply Officer, Dhule and the judgment and order 04.08.2015 passed by Respondent No.2 in Revision Application(Vai-a-na-1415/pra.kra.155/Na.Pu.23) are hereby quashed and set aside.
- ii. The application of the petitioner dated 10.03.2015 (Exh.C) is hereby allowed in terms of the prayer made therein.
- iii. Rule is accordingly made absolute. Writ petition is disposed of.
- iv. In the circumstances there shall be no order as to costs.

(V. K. JADHAV, J.)

JPC