

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.8148 of 2009

ORDER:

Heard Sri P.Laxma Reddy for petitioner and Assistant Government Pleader for respondents.

The petitioner challenges proceedings Rc.B1.No.623/2007, dated 10-03-2008 of the Joint Collector and Proceeding No.E2/4268/2008, dated 21-03-2009 as illegal, violative of A.P.Petroleum Products Order, 1980 and the decision reported in 2005 (2) ALD (NOC 125).

The circumstances relevant for disposal of writ petition are as follows:-

The petitioner was working as Kerosene Oil hawker of Chekkapalli Village for about 15 years. On 13-10-2007, the 4th respondent inspected kerosene point and found the following irregularities:-

- 1) Sri K.Subba Rao, Kerosene hawker is residing in Vijayawada.
- 2) Sri K.Subba Rao, Kerosene hawker has allowed Sri K.Bhaskara Rao to act as benami hawker and distributed the P.D.S. Kerosene Oil.
- 3) Sri K.Subba Rao, Kerosene hawker has not produced stock and sales registers at the time of inspection by the petitioner.
- 4) Sri K.Subba Rao, Kerosene hawker failed to maintain stock and sales registers.
- 5) Sri K.Subba Rao, Kerosene hawker has not maintained true and correct accounts.
- 6) Sri K.Subba Rao, Kerosene hawker is not obtaining the signatures of the card holders in the sales register.
- 7) As per the truck sheet of the Kerosene wholesaler 1200 liters of Kerosene Oil was delivered to the hawker point and as per the coupons available at

the time of inspection by the petitioner 822 liters of Kerosene Oil was distributed and there was ought to be a balance 378 liters and there was a ground balance of 470 liters of Kerosene Oil and there was an excess variation of 92 liters of Kerosene Oil.”

The 2nd respondent issued show-cause notice, dated 04-12-2007. The petitioner submitted explanation denying all the points in show-cause notice dated 04-12-2007. The 2nd respondent through proceedings, dated 10-03-2008 found petitioner guilty of 1st charge viz., the petitioner is not residing at Chekkapalli village.

To appreciate the fact in issue and the findings by primary authority, I am of the view that the following paragraphs can be extracted hereunder.

“The case was posted for hearing on 07-02-2008. The delinquent hawker was called on 07-02-2008 and he was present and requested time for filing explanation and the case was adjourned for 21-02-2008. On the date of hearing (21-02-2008) he was present and filed Photostat copies of his ration card and Election Photo Identity Card issued in Tadepalli Mandal of Guntur District and requested pardon and restore his hawker’s licence treating the offence is a first offence.

Perused the case records. The delinquent hawker was present on 21-02-2008 and filed Photostat copies of his ration card bearing No.WAP 07110200072 issued by the D.P.L. Incharge and Election Photo Identity Card bearing No.CPT 2311280 issued by the Electoral Registration Officer, Mangalagiri Assembly Constituency Guntur District. The delinquent hawker has not produced any evidence that he is a resident of Chekkapalli Village of Musunuru Mandal in Krishna District. Moreover he stated at the time of personal hearing that he is residing nearby his uncle’s house in Ippatam Village of Tadepalli Mandal in

Guntur District and he left the hawkership in the hands of Sri Kosuri Bhaskara Rao,

S/o.Subbaiah as benami and the delinquent hawker has also admitted that Sri Kosuri Bhaskara Rao is looking after his hawker point. He also stated that he obtained hawker licence at the instance of some outsider by giving some amount as illegal gratification.

It is clearly established that Sri Kosuri Subba Rao is a non resident of Chekkapalli Village of Musunuru Mandal and obtained licence at the instance of some outsider by giving some amount as illegal gratification and he left the hawkership in the hands of Sri Kosuri Bhaskara Rao, S/o.Subbaiah as benami and causing much inconvenience to the card holders and the representation of the delinquent hawker is not convincing and not admissible and he violated Clauses 3(1), 3(2), 12(1) (ii), (iii), 13 of A.P.Petroleum Products (L & R.S.) Order, 1980 and conditions 3, 4, 5, 6, 8 and 9 of licence issued under A.P.Petroleum Products (L & R.S.) Order, 1980 and Clause 3, 4 and 6 of Kerosene (Restriction on Use and Fixation of Ceiling Price) Order,1993 and his hawkership is liable for cancellation.

In view of the above it is established that he contravened the provisions of the A.P.Petroleum Products (L & R.S.) Order, 1980 and the licence issued to him under the provisions of the said order to Sri Kosuri Subba Rao, kerosene hawker, K.L.No.1/MSR/93, (U/S) Chekkapalli Village, Musunuru Mandal is hereby cancelled with immediate effect under Section 28(1) of the A.P.Petroleum Products (L&R.S.) Order, 1980 in the interest of card holders. The Tahsildar, Musunuru is directed to make alternative arrangements to avoid inconvenience to the card holders.

The petitioner filed appeal before 1st respondent and through order dated 21-03-2009, the appeal was dismissed. For pleading the narration, the crucial aspect on which the finding of fact is recorded by 1st respondent reads as follows:-

“According to condition-1 of the licence issued

under the A.P.Petroleum Products (L&RS) Order, 1980, the person to whom the licence was issued, authorized to purchase, sell or store for sale the petroleum product.

As per the copy of Identity Card of Election Commission of India issued on 11-6-2003 and as per the copy of House hold card issued on 11-6-2006, address of the K.Subbarao was noted as House No.6-10/1, Ippatam village, Guntur District. Thus, it is evident that he is not residing in Chekkapalli Village, Musunur Mandal, Krishna District. At the time of inspection one K.Bhaskararao was found while distributing kerosene oil to the cardholders in the place where the licensee has to function.

Further, as seen from panchanama and the statement of the K.Bhaskararao, sales and stock registers and also the licence were not made available in the licensed premises and he is not obtaining the signatures of the cardholders in the sales register while distributing kerosene oil. Thus there is a clear violation of clause 3 and 12(1) (ii) of the A.P. Petroleum Products (L&RS) Order, 1980.

In view of the above, it is proved beyond doubt that the licensee i.e., Sri K.Subbarao is not residing in Chekkapalli village in which the hawker point was located and K.Bhaskararao was distributing kerosene in place of the licensee, stock and sales registers and also the licence were not kept at the hawker point and the said Bhaskararao is not taking the signatures of the card holders in the sales register while distributing kerosene oil."

Sri P.Laxma Reddy, learned counsel for petitioner tried to persuade this Court that both the authorities have lost sight of all the details given in the explanation and the findings have been recorded in a monotonous way. The inference drawn as regards the residence of petitioner is incorrect and unsustainable. According to him, the evidence relied upon by the Department cannot and could

not have been looked into for any purpose. Therefore, the findings recorded by the authorities suffer from perversity and prays for setting aside the orders impugned in the writ petition.

The Assistant Government Pleader contends that the presumption of absence of residence of petitioner at Chekkapalli Village is inferred by the authorities from the documents produced by petitioner himself. He further contends that the documents clearly show that the petitioner is not a resident of kerosene check point and stocks registers are not properly maintained by petitioner and therefore, this court cannot re-examine the material available on record and come to a different conclusion and prays for dismissal of writ petition.

Summing up the admitted circumstances, it is observed that the inspection was conducted on 13-10-2007 by 4th respondent. The primary allegations against petitioner are two-fold that he is not a resident of the subject village and that registers are not properly maintained by him. The distribution point is run by benami i.e., brother-in-law of petitioner.

As regards the first aspect of the matter, the primary as well as appellate authority have relied upon voter I.D. card of the year 2003 and household card, dated 11-06-2006 issued to petitioner in the year 2006. These two documents are rightly considered and a finding of fact is recorded against petitioner. However, it is not the case of petitioner that being a licensee, the petitioner resides at any other village. Once that condition is accepted, this court is of

the view that no exception can be found on the primary ground that warranted cancellation of licence of petitioner. The petitioner if is expected by conditions to reside at the village and if he is not residing at the village, in my view, no exception to the findings of fact can be taken, after perusing the entire material available on record. I am unable to agree with the submissions of the learned counsel for petitioner.

The writ petition fails and it is accordingly dismissed. There shall be no order as to costs.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

S. V. BHATT, J

Dt: 26-04-2016
Prv

THE HON'BLE SRI JUSTICE S.V.BHATT

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26-04-2016

Prv