

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.719 of 2010
Date of Decision:- 17.10.2016

M/s Garg Oil Store and others

..... Petitioners

Vs.

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: - Mr.Vijay K. Jindal, Advocate,
for the petitioners.

Mr.Anant Kataria, DAG, Punjab.

RAKESH KUMAR JAIN, J.

The petitioners have made three prayers, firstly, for the issuance of a writ in the nature of certiorari quashing the order dated 03.9.2009 passed by respondent No.2, secondly, for the issuance of a writ in the nature of mandamus to declare that the licensees under the Punjab Oil and Kerosene Dealers Licensing Order, 1978 [for short 'the Order of 1978'] are entitled to do any other business of retail/wholesale in conjunction with the business of kerosene and lastly, for the issuance of a direction to respondent No.3 to supply to the petitioners other essential commodities apart from kerosene for distribution amongst consumers of their respective areas on the basis of the Punjab Public Distribution System Licensing and Control Order, 2003 [for short 'the Order of 2003'].

The petitioners are the licensees under the Order of 1978 for the

“dealer means a person engaged in the business of sale or storage for the sale of light diesel oil or kerosene or both whether wholesale or retail and whether in conjunction with any other business or not, and includes – (i) his representative or agent; and (ii) an oil company making wholesale supply from its storage or selling point.” The Government of India notified the Kerosene (Restriction on Use and Fixation of Ceiling Price) Order, 1993 [for short ‘the Order of 1993’], which was extended to the whole of India for the purpose of restriction of using and fixation of ceiling price of kerosene. The dealers appointed under Order of 1978 and governed by the Order of 1993 were not permitted to sell anything else but kerosene. A press note was issued by the Government of Punjab on 1.3.1996 for inviting applications for allotment of ration depots in District Bathinda in which a condition was imposed that the applicant or any of his dependent-member of the family should not already own ration depot or kerosene license and such licence should not have been cancelled. The applicant must be doing business of retail shop and must have the experience of retail shop. Whereas, it is alleged that on 9.7.1996, respondent No.2 issued consolidated instructions regarding supervision of kerosene oil depots/ration depots/brick-kilns/petrol pumps in which, according to the petitioner, it was mentioned that while allocating ration depots, preference should be given to those persons who have licences for kerosene retail outlet.

The case of the petitioners is that in the year 2003, the Punjab Government issued the Order of 2003, extended to the State of Punjab, for the purpose of running fair price shop under the ‘Public Distribution System’, which means the system for distribution of essential commodities to the ration card holders through the fair price shops, such as rice, wheat, sugar, edible oils, kerosene and such other commodities as are notified by

the Central Government. The only claim of the petitioners set up in this petition is for permission to sell other essential commodities apart from kerosene as has been allotted to the licensee under the Order of 2003.

In this regard, the petitioners have filed CWP No.6464 of 2009, which was disposed of by this Court with the following order passed on 29.4.2009: -

“Notice of motion.

Shri G.S. Attariwala, learned Additional Advocate General, Punjab, accepts notice on behalf of the respondents.

In view of the nature of order which I propose to pass, there is no necessity to seek any counter affidavit from the respondents.

The petitioners seek a mandamus to declare them entitled to run fair price shops /ration depots under the Punjab Oil and Kerosene Dealers Licensing Order, 1978. The petitioners also seek a direction to the respondents to allow them to sell essential commodities, other than kerosene, on the fair price shops.

The petitioners’ case is that they have been granted license to sell kerosene under the Control Order of 1978 and by virtue thereof, they are eligible to be licensed to run fair price shops/depots under the Punjab Public Distribution System (Licensing and

Control), 2003. It would also essentially entitle them to sell the other commodities like rice, wheat, sugar, edible oils, etc. The respondents, however, on an alleged erroneous interpretation of the two control orders, referred to above, are not permitting the petitioners to run the fair price shops. In this regard, the petitioners have explained the legal and factual position by way of a legal notice dated 24.1.2009 (Annexure P-7) but no response thereto has been received by them.

Having heard learned counsel for the parties and considering the nature of relief sought in this writ petition, I deem it appropriate to dispose of the same at this stage with a direction to respondent No.2 to decide the petitioners' claim as contained in the above mentioned legal notice dated 24.1.2009 (Annexure P-7), by passing a reasoned order within a period of three months from the date of receipt of a certified copy of this order."

Apropos, respondent No.2 passed the impugned order on 3.9.2009. The relevant parts of the impugned order are reproduced as under:-

“In the year 2003, Punjab Government issued public distribution system licensing and control order 2003. The dealers/fair price owners were held entitled to sell essential commodities under this control order. However, the dealers, who were registered under the 1978 and 1993 control orders, they were having right to distribute kerosene only. They were not entitled to distribute other essential commodities like wheat and sugar etc.”

“As per control order 1978 and 1993, the dealer who have been appointed, they are entitled to sell only kerosene oil. They are not entitled to sell other essential commodities.”

“In this connection, it is mentioned here that Punjab Government firstly issued memo no.1-S(209)96/2228 dated 9.7.1996 containing various instructions that at the time of allotment of ration depots only those dealers be given preference, who were already registered for distribution of kerosene under the control order of 1978. However, later on the said memo was withdrawn by Punjab Government vide memo No.1-S(209)/98/1467 dated 5.5.1998.

Now from the year 2003 onwards, the Punjab Public Distribution System (Licensing and Control) Order, 2003 is in force. Under this control order, depot holder/fair price shop owners have been issued licenses. The kerosene oil dealers, who have issued notices, do not become entitle to have licence under PDS Control Order 2003.”

“The position mentioned in this para is not based on any solid ground, which cannot be accepted. The ground is not bound to convert their dealership/license for distribution of kerosene under Control Order 1978. The position mentioned in this para is without any basis and it has no solid reasoning, and it cannot be accepted, because the government is not bound to convert their licenses obtained under Control Order 1978. The government is not bound to convert their dealership/licenses under Control Order 1978 to PDS Control Order 2003. These persons have only been authorized to distributed kerosene. They cannot distribute other essential commodities. Their demand is not genuine.”

It is contended by the petitioners that in the Order of 2003, permission is given to the depot holders to sell kerosene as well whereas they have been restricted only to the sale of kerosene and are not being permitted to sell other essential commodities and thus, a prayer has been made for allowing them to sell other essential commodities in terms of the Order of 2003. In view of the definition 'dealer' provided in the Order of 1978, the dealer will be a person engaged in the business of sale or storage for sale of light diesel oil or kerosene or both whether wholesale or retail and whether in conjunction with any other business or not. It is also submitted that the respondents have allowed one Tersem Lal to do the business other than kerosene though he was a licensee under the Order of 1978.

In reply filed by the respondents, it is stated that the petitioners have wrongly interpreted the definition of 'dealer' provided in the Order of 1978 as according to the respondents, the word 'conjunction with' means that the licensee under the Order of 1978 can also do the business of Karyana or cloth business etc. but he cannot be allowed to do business under the Public Distribution System of other essential commodities which is regulated by the Order of 2003. Insofar as the case of Tersem Lal is concerned, it is submitted that he had filed CWP No.12721 of 1997. His case was that he was not supplied essential commodities and had also surrendered his kerosene oil licence. The Government invited application for allotment of depots for the sale of essential commodities. He applied for one such depot in the category of handicapped persons. He was informed on 25.7.1997 by the District Food and Supplies Controller, Bathinda that his case has been examined and allotment has been made in his favour but despite that the food items were not supplied to him though he had surrendered his kerosene oil license and thus the writ petition was filed for

the direction to the respondents to issue essential commodities meant for the fair price shop. The said writ petition was allowed on the ground that the revised instructions were issued by the Government in August 1997 and thus it was held by this Court that the instructions of August 1997 shall operate prospectively and not retrospectively and the license already granted to run the depot cannot be cancelled or recalled under the subsequent instructions. It is thus submitted that the petitioners cannot equate themselves with the case of Tersem Lal as the facts of their case are altogether different. It is also submitted that petitioners No.1 and 2 had not even applied for the licence under the Order of 2003 though petitioner No.3 had applied and his application had been considered and rejected by the impugned order. It is further submitted that on 22.4.2013, Secretary, Food and Supplies, Punjab was directed to file affidavit disclosing justification for introducing educational qualifications of 10th standard (Matric) and above etc. for supply of essential commodities through rural and urban depots. Thus, the affidavit was filed that on 3.12.2009, instructions were issued by respondent No.2 to all the District Controller, Civil Supplies & Consumer Affairs, Punjab regarding the procedure for opening of New Fair Price Shops (Ration Depots) as per which the educational qualification required is 10th standard (Matric) and above and minimum 5th (for widow and widow of ex-servicemen). Following relevant averments have been made in the affidavit dated 24.6.2013:

“3. That it is respectfully submitted that Fair Price Shop (FPS) licensee is required to perform various duties like Sale of Essential commodities as per the entitlement of ration card holder; display of

information on notice board; maintenance of records of ration card holders, stock register, issue or sale register etc. as specified in the Form-B in Punjab Public Distribution System (Licensing and Control) Order 2003, copy of which is already on record as Annexure R-2. These duties can be performed better by an educated person, hence the State Government has incorporated 'Matric' as minimum qualification in the policy issued vide memo No.IFD(110-A)-09/5093 dated 3.12.09, copy of which is already on record as Annexure R-3.

4. That it is respectfully submitted that the Form-A in Punjab Public Distribution System (Licensing and Control) Order, 2003 is an application form for grant/renewal of licence for sale of essential commodities. It is also worthwhile to mention here that the procedure for allotment of fair price shop and constitution of Fair Price Shop Allotment Committee too has been clearly spelt in the policy alongwith other factors considered for allotment of Fair Price Shop viz., Age limit, reservation policy etc. as they

are also not been specifically mentioned in the Form-A.

5. That it is respectfully submitted that the targeted Public Distribution System (TPDS) operations in the State are being computerized as per directions of the Hon'ble Supreme Court of India in CWP (Civil) 196 of 2001. It is proposed to computerize the sale of TPDS commodities at Fair Price Shop including identification and authentication of beneficiaries and recording of transactions, which would be difficult for an illiterate person to carry out."

Learned counsel for the petitioners has submitted that the impugned order (Annexure P-9) is non-speaking as no cogent reasons have been given while holding the prayer made by the petitioners to be non-genuine and that in view of the definition of 'dealer', the petitioners are entitled to do other business also while being engaged in the sale of kerosene and have preferential right in term of Clause 5 of the policy dated 9.7.1996 (Annexure P-3) wherein it is provided that while allocating ration depots, preference should be given to those persons who have licenses for kerosene retail outlet.

On the other hand, learned counsel for the respondent has submitted that a detailed order has been passed on the representation of the petitioners. He has referred to para 10 of the impugned order wherein the

alleged reasoning has been given by the competent authority while declining the prayer made by the petitioners.

I have heard learned counsel for the parties in detail and after examining the available record, am of the considered opinion that there are many aspects of the matter which have not been dealt with by the competent authority while passing impugned order dated 3.9.2009 (Annexure P-9) as it has not dealt with Clause 5 of the Policy dated 9.7.1996 (Annexure P-3) and as to whether the petitioners are entitled to sell any other product in terms of the definition of 'dealer' provided in Clause 2(a) of the Order of 1978.

Thus keeping in view the facts and circumstances, it would be appropriate to remand the case back to the competent authority to pass afresh order after giving both the parties an opportunity of hearing and decide the *lis* between them by passing a speaking order taking into consideration all the aspects of the matter. The impugned order is thus hereby set aside and the case is remanded back to the competent authority (respondent No.2) to decide the matter afresh after affording opportunity of hearing to both the parties and by passing a speaking order giving reasons in support of his decision.

Parties are directed to appear before respondent No.2 on 07.11.2016.

17.10.2016

Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No