

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2017

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**THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
And
THE HONOURABLE MR.JUSTICE M.DHANDAPANI**

**W.A.No.1116 of 2013
And
M.P.No.1 of 2013**

- 1.The Commissioner of Civil
Supplies & Consumer Protection,
Chepauk, Chennai – 600 005.
- 2.The District Supply Officer,
Tuticorin.
- 3.The Government of Tamil Nadu,
rep. by its Secretary to Government,
Civil Supplies & Consumer Protection,
Chennai – 600 009. ... Appellants

Vs.

P.Mariappa Raja Respondent

Prayer:

Writ Appeal filed under Clause 15 of Letters Patent seeking to set
aside the order dated 02.04.2013 made in W.P.No.5790 of 2002.

For Appellants : Mr.P.Sivashanmugasundaram
Special Government Pleader
For Respondent : No Appearance

J U D G M E N T

(Order of the Court was made by NOOTY.RAMAMOHANA RAO,J.)

This appeal is preferred by the respondents in the writ petition, namely, the State Government and its Commissioner of Civil Supplies and Consumer Protection and the District Supply Officer, Tuticorin. They are aggrieved by the directions issued by the learned Single Judge to consider the case of the writ petitioner for renewing his Retail Registration Certificate to deal with the commodity 'kerosene'.

2.Kerosene, a by-product which emerges in the process of refining crude oil, is used, essentially as cooking fuel for its highly inflammable characteristics. It is therefore, declared as an essential commodity and also a heavily cost subsidised commodity too. Section 5 of the Essential Commodities Act, 1955, accords power to the Central Government, by a notification to make available the power to make orders or notifications under Section 3 of the said Act upon State Governments. By virtue of such facility, the State Government of Tamil Nadu issued the Tamil Nadu Kerosene (Regulation of Trade) Order, 1973. This being a statutory instrument, it is enforceable. Further, this instrument being a regulatory one, it calls for strict adherence as well.

3.The aforementioned regulation dealt with all the regulatory aspects of trade in kerosene. The expression 'dealer' has been defined in fairly exhaustive terms in Clause 2(i) of the aforementioned order. Consequently, both the wholesalers and retailers also are included in the said expression of 'dealer'. Clause 3 of this order dealt with grant of licence in favour of wholesalers, while Clause 4 dealt with the procedure for grant of licences and the period of licence and the fee chargeable from the wholesalers. Clause 5 of the order dealt with all aspects relating to 'retail trade'.

4.The State Government has exercised the power available under Section 3 of the Essential Commodities Act and made certain amendments to the Tamil Nadu Kerosene (Regulation of Trade) Order, 1973, and notified the said amendments through their G.O.Ms.No.380, Co-operation, Food and Consumer Protection Department, dated 22.12.1988. After Clause 5 (5) of the said order, two new sub-clauses namely, (6) and (7) have been introduced and the newly added sub-clauses (6) and (7) reads as under:

""(6) The application for renewal of Retail Registration Certificate shall be made after payment of fees prescribed in sub-clause (5), not less than two months

before the date of the expiry of the Retail Registration Certificate.

(7) A penalty of Rs.10/- (Rupees ten only) shall be levied on all applications for renewal of Retail Registration Certificate received after the time limit prescribed under sub-clause (6) of clause 5. But no application for renewal of Retail Registration Certificate shall be entertained after the 30th November.”:

The hitherto existing sub-clauses (6), (7) and (8) in Clause 5 stood re-numbered as sub-clauses (8), (9) and (10) respectively.

5.Sub-Clause (6) specifically required all such applications seeking renewal of Retail Registration Certificate to be submitted after payment of the fee prescribed in sub-clause (5) not less than two months before the date of expiry of the Retail Registration Certificate. Thus, not only the payment of renewal fee but the request for renewal of Retail Registration Certificate was needed to be submitted two months prior to the date of expiry of such certificate. Importantly, sub-clause (7) which granted some liberty for entertaining the renewal request submitted belatedly by levying a paltry penalty amount of Rs.10/- but however, has taken care to circumscribe the discretionary

power of the competent authority to entertain any such request of renewal to a strict time frame limit.

6.The following expressions found in sub-clause (7) hold the key for understanding the limits prescribed for entertaining belated applications upon payment of late fee penalty and they read: "but no application for renewal of Retail Registration Certificate shall be entertained after 30th November". Thus all applications for renewal including those which are submitted upon payment of a nominal penalty of Rs.10/- are liable to be submitted on or before 30th November of the year in which the period of the licence granted earlier stands expired. Thus, any renewal application submitted beyond 30th November of the year in which the licence expires cannot be entertained.

7.The reasons for confining the discretion to entertain belated renewal applications are not far to seek. Every renewal application requires consideration by taking all relevant factors its account, which it means is not an automatic affair. Any intervening change in circumstances, including any change in policy direction, is also liable to be taken note of, while granting any such renewal. For instance, if the

mobile retail outlet/ selling facility is to be discontinued and instead fixed retail outlets are required to be established, in the absence of any sustainable challenge to it, non-renewal of a Retail Registration Certificate of mobile vendors cannot be faulted what increased with the incidence of mis-use and abuse of kerosene and also in view of the increased subsidy component on kerosene and also in view of dwindling numbers of dependants of kerosene as a cooking fuel due to increased transition of many homes and consumers to a far more safer and environmental friendly cooking media of LPG. The retail out-letting activity of kerosene is considered as fraught with risk factors and further the free availability of kerosene in the open market was considered as a factor that can lead easily to contamination of many other petroleum products such as high speed diesel or petrol, the State Government has preferred not to entertain any such renewal application submitted beyond 30th November of the year in which the licence expires. Therefore, the time limit to entertaining belated renewal applications by fixing 30th November has a rational approach and it is not an artificial cut off date.

8.Unfortunately, the learned Single Judge has not specifically noticed and dealt with this particular feature incorporated in the

statutory instrument in the form of sub-clause (6) in Clause 5 of the Tamil Nadu Kerosene (Regulation of Trade) Order. The direction issued by the learned Single Judge to consider the application of the writ petitioner which is admittedly submitted only on 31.12.2001 cannot be, hence, sustained. Learned Single Judge could not have issued any such direction to the State Government or its subordinate agencies to consider and or grant a renewal for kerosene retail outlet of the writ petitioner, by entertaining any such application submitted after 30th November, 2001. When the power is not available to the State Government to entertain any such application, under the Regulations, by way of a judicial review exercise, Court cannot compel the State Government to act contrary to the requirements of an enforceable statutory instrument.

9. We are therefore, of the view that there is an error committed by the learned Single Judge in issuing such directions which are issued in the writ petition. The State Government cannot entertain any renewal applications submitted beyond 30th November and since the writ petitioner sought for such renewal only by submitting the application by 31.12.2001, the same is not liable to be entertained and consequently, the renewal of its retail outlet cannot be granted either. The view entertained by the learned Single Judge is not sustainable.

**NOOTY.RAMAMOHANA RAO,J.
And
M.DHANDAPANI,J.**

10.The writ appeal therefore, stands allowed but however,
without costs. Consequently, the connected miscellaneous petition is
also closed.

**[N.R.R.,J.] [M.D.I.,J.]
13.07.2017**

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Speaking Order

Index: Yes
Internet: Yes



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