

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1330 OF 1997

Chhotibi W/o. Karimkhan,
Age. 50 years, Occ. Business,
R/o. Ambajogai, Tq. Ambajogai,
Dist. Beed. ...Petitioner.

Versus

1. The State of Maharashtra.
2. The District Supply Officer,
Dist. Beed.
3. The Tahsildar,
Tq. Ambajogai, Dist. Beed.
4. Deputy Commissioner (Supply),
Commissioner Office, Aurangabad. ...Respondents.

WITH
WRIT PETITION NO. 1331 OF 1997

Smt. Shahnazbee W/o. Shaikh Samad,
Age. 27 years, Occ. Business,
R/o. Ambajogai, Tq. Ambajogai,
Dist. Beed. ...Petitioner.

Versus

1. The State of Maharashtra.
2. The District Supply Officer,
Dist. Beed.
3. The Tahsildar,
Tq. Ambajogai, Dist. Beed.
4. Deputy Commissioner (Supply),
Commissioner Office, Aurangabad. ...Respondents.

WITH
WRIT PETITION NO. 1332 OF 1997

A.S. Kulkarni Pimpalgaonkar,
Age. 43 years, Occ. Business,
R/o. Ambajogai, Tq. Ambajogai,
Dist. Beed. ...Petitioner.

Versus

1. The State of Maharashtra.
2. The District Supply Officer,
Dist. Beed.
3. The Tahsildar,
Tq. Ambajogai, Dist. Beed.
4. Deputy Commissioner (Supply),
Commissioner Office, Aurangabad. ...Respondents.

WITH
WRIT PETITION NO. 1333 OF 1997

Bhimashankar Gurlingappa Waghmare,
Age. 43 years, Occ. Business,
R/o. Ambajogai, Tq. Ambajogai,
Dist. Beed. ...Petitioner.

Versus

1. The State of Maharashtra.
2. The District Supply Officer,
Dist. Beed.
3. The Tahsildar,
Tq. Ambajogai, Dist. Beed.
4. Deputy Commissioner (Supply),
Commissioner Office, Aurangabad. ...Respondents.

WITH
WRIT PETITION NO. 1334 OF 1997

Prabhuappa S/o. Trimbakappa Rewadkar,
Age. 50 years, Occ. Business,
R/o. Ambajogai, Tq. Ambajogai,
Dist. Beed. ...Petitioner.

Versus

1. The State of Maharashtra.
2. The District Supply Officer,
Dist. Beed.
3. The Tahsildar,
Tq. Ambajogai, Dist. Beed.
4. Deputy Commissioner (Supply),
Commissioner Office, Aurangabad. ...Respondents.

WITH
WRIT PETITION NO. 1335 OF 1997

Abdul Aziz Ismail,
Age. 52 years, Occ. Business,
R/o. Ambajogai, Tq. Ambajogai,
Dist. Beed. ...Petitioner.

Versus

1. The State of Maharashtra.
2. The District Supply Officer,
Dist. Beed.
3. The Tahsildar,
Tq. Ambajogai, Dist. Beed.
4. Deputy Commissioner (Supply),
Commissioner Office, Aurangabad. ...Respondents.

WITH
WRIT PETITION NO. 1377 OF 1997

B.P. Parwe,
Age. 35 years, Occ. Business,
R/o. Ambajogai, Tq. Ambajogai,
Dist. Beed. ...Petitioner.

Versus

1. The State of Maharashtra.
2. The District Supply Officer,
Dist. Beed.
3. The Tahsildar,
Tq. Ambajogai, Dist. Beed.
4. Deputy Commissioner (Supply),
Commissioner Office, Aurangabad. ...Respondents.

WITH
WRIT PETITION NO. 4727 OF 1997

Abdul Karim Shakir S/o. Shaikh Rajjak,
Age. 34 years,
Through his G.P.A.
Sk. Abdul Salam Mujahid S/o. Sk. Abdul Rajjak,
Age. 26 years., Occ. Business,
R/o. Ambajogai, Tq. Ambajogai,
Dist. Beed. ...Petitioner.

Versus

1. The State of Maharashtra.
2. The District Supply Officer,
Dist. Beed.
3. The Tahsildar,
Tq. Ambajogai, Dist. Beed.
4. Deputy Commissioner (Supply),
Commissioner Office, Aurangabad. ...Respondents.

Advocate for Petitioners : Mr. V.R. Sonwalkar.
AGP for Respondent Nos. 1 to 4 : Mr. B.A. Shinde.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 21st June, 2018

ORAL JUDGMENT :

1. In all these identical Writ Petitions, the identically placed Petitioners are aggrieved by a common order dated 31st December, 1996, passed by the Deputy Commissioner (Supply), Aurangabad, by which, their Appeals have been rejected and the order of the Tahsildar dated 25/07/1996, canceling their Kerosene Hawker licenses, has been sustained.

2. While admitting these Petitions, this Court has granted ad-interim protection to these Petitioners on 10/04/1997.

3. Shri Sonwalkar, learned advocate for the Petitioners has strenuously criticized the impugned order. He submits that each of these petitioners was granted a license in Form III, known as the Hawkers license, for the sale of Kerosene under the Provisions of the Maharashtra Kerosene Dealers Licensing Orders, 1966. Each of these Petitioners was operating their business under the said license, either through himself/herself or through an agent/another person acting on his/her behalf. Order 10 of the 1966 Orders

permits for cancellation of a license, if the license holder or his agent or servant or any other person acting on his behalf, contravenes the terms and Conditions of the license.

4. He submits that the only reason for the Tahsildar to pass the order dated 25/07/1996, which is identical in case of all the Petitioners, is that these Petitioners have violated one of the conditions of the license. Their Appeals have also been rejected on this solitary ground. He, therefore, strenuously submits when the terms and conditions of the license do not prohibit any Petitioner from engaging a servant or agent or another person on his/her behalf to conduct the business of selling Kerosene, the impugned orders are illegal and unsustainable.

5. The learned AGP on behalf of the State has strenuously supported the impugned order. He submits that merely because this Court has granted ad-interim protection to these petitioners, cannot be a ground for setting aside the impugned order, since the passage of time would not render the impugned orders illegal only because this Court has stayed them.

6. He, further, draws my attention to the terms and conditions of the licenses which are identical. He relies upon one license, by way of a specimen, dated 19/05/1994, in the first Petition. He points out clause 3 of the license which reads as under :

“3) The licensee shall carry on the aforesaid business at such place or places or in such area as may be directed from time to time by the licensing authority.”

7. In view of the above reproduced condition of the license, the learned AGP submits that clause 3 has specifically provided for the licensee to carry on the business by himself/herself. The words “his agent or servant or any other person acting on his behalf” have been excluded from the terms of the license. None of these Petitioners have mentioned in the application, while seeking a license, that they would conduct the business through their servants or agents or any other person.

8. I find that though Order 10 would permit a license holder to conduct his business through his agent or servant or any other person, it would not mean that this would amount to an implied permission to a license holder to take a license in his/her name and carry out the business of selling

Kerosene through any other person of his choice. This inference has to be drawn since, the terms of the license specifically excluded carrying on the said business through 'any servant or agent or any other person'.

9. The fact situation in these cases appear to be an eye-opener. The facts which would indicate the extent to which these petitioners have misused their licenses, are as under :-

(a) One Petitioner Md. Abdullah, is the owner, printer and editor of a Weekly Bindusara. He operates his Kerosene license through another person and did not divulge the name of the said person, else it would have been noticed that somebody else was operating the said business.

(b) Another Petitioner Shri Prabhuappa S/o. Trimbakappa Rewadkar, is running a business of a Mill and also a Cloth Shop. He was operating the license through his Son.

(c) One Petitioner Abdul Karim Shakir S/o. Shaikh Rajjak went to Dubai for service and was not available for personal interrogation and some other person was operating his business of selling kerosene.

(d) One Petitioner Bhimashankar Gurlingappa

Waghmare had engaged Mr. Shaikh Mukhtar Shaikh Burhan, to carry out the business and it was admitted that permission to do so was not taken.

(e) One Petitioner A.S. Kulkarni Pimpalgaonkar admitted that Shaikh Nafiz S/o. Shaikh Papamiya, was conducting the business under his license.

10. I find that all these Petitioners are identically situated and it was noticed in each case by the DSO as well as the Deputy Commissioner Supply that, none of them were conducting the said business. It requires no debate that such a Hawker License will provide source of earning to a needy person. If businessmen get such licenses and sell Kerosene through some other person without authorization under the terms and conditions of the license, it would amount to misusing such licenses.

11. In the event all these Petitioners had a desire to conduct business by proxy by taking refuge under Order 10, they could have moved a specific Application seeking such permission. It also cannot be ignored that neither such permission was taken, nor had the license issuing authority allowed the licensee to carry on the business by proxy or

through an agent.

12. When these licencees were called upon for hearing, most of them were not available. Clauses 4 and 5 of the license require such licensee to be available for producing his stock and accounts of Kerosene for inspection and to explain the method of calculation, transportation, hours and place of sale. Clause 6 mandates that the licensee would produce his license for inspection as and when demanded. If the licensee is serving elsewhere or is out of the country, naturally these licensees were not present before the Tahsildar.

13. It cannot be ignored that unemployment in India is growing at a fast pace. Uncontrolled growth of population is the primary cause. It is distressing and highly disturbing to notice that the standard of living of the major chunk of the Indian population is falling with the ever growing population and the rising cost of living. People are desperately in search of employment. Creating more employment opportunities in the urban as well as the rural areas, is the need of the hour. Self employment generating schemes have to be launched for the unemployed youth. Employment

Guarantee Scheme, Jawahar Rojgar Yojana, TRYSEM, etc. are some of the methods for generating employment, though not having a perennial character, but capable of training persons to work hard and provide self employment opportunities.

14. As has been observed by the Late Justice V.R. Krishnan Iyer in his judgment in **Jolly George Varghese and another Versus Bank of Cochin [AIR 1980 SC 470]**, that in this Country of Daridra Narayan, being poor is not a crime. In this backdrop, can this Country afford to have businessmen/traders/merchants/ employed/salaried persons, obtain Kerosene licenses and earn additional income, by conducting sale of Kerosene, by proxy. If a really needy and poor person is granted such a license, he would be able to feed his family with two square meals and keep his body and soul together. This country cannot afford granting licenses to operate business by proxy. What is required is to generate one job per family. In the present case, the State authorities have rightly acted to halt the unethical conduct of these petitioners who had violated the terms and conditions of their licenses.

15. Taking into account all these factors, I do not find that the impugned order could be termed as being perverse or erroneous. These Petitions, being devoid of merit are, therefore, dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

S.P.C.