

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.978 OF 2014

Meena w/o Ramanlal Thole
Alias Meena d/o Gulabchand Sogani
Age – 38 years, Occ – Agriculture & Business
R/o Waluj, Taluka – Gangapur
District - Aurangabad

PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary
(Department of Food, Civil Supply and
Consumer Protection)
Mantralaya, Mumbai-32
2. The District Supply Officer,
Aurangabad
3. The Deputy Commissioner (Supply)
Aurangabad
4. The Hon'ble Minister
(Department of Food, Civil Supply and
Consumer Protection)
Mantralaya, Mumbai – 32

RESPONDENTS

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Mr. Ajinkya Kale h/f Mr. S. B. Talekar, Advocate for petitioner
Mr. A. A. Jagatkar, AGP for respondents - State

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 14th DECEMBER, 2021

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with
the consent of learned advocates for the parties.

2. This petition is directed against order dated 5th February, 2009 passed by the District Supply Officer, Aurangabad – respondent No. 2, thereby cancelling retail kerosene licence issued in favour of the petitioner. The said order is confirmed by the respondent No. 3 – Deputy Commissioner (Supply), Aurangabad by order dated 3rd March, 2009 passed in Appeal and by the Hon'ble Minister for Food, Civil Supply and Consumer Protection - respondent No. 4 by order dated 15th October, 2013 passed in Revision Petition No. 222 of 2010.

3. The petitioner was issued retail kerosene licence bearing No.86/1995 on 2nd March, 1995 under the Maharashtra Kerosene Dealers' Licensing Order, 1966. Husband of the petitioner namely Ramanlal Madanlal Thole was also issued a retail kerosene licence bearing No. 38/1994 in the year 1994.

4. On 1st October, 2008, a surprise inspection at the retail outlet of the petitioner was carried out, pursuant to which a show cause notice dated 18th October, 2008 was issued to the petitioner pointing out deficiencies, namely – (i) There was no board displayed on the shop; (ii) Both, Ramanlal Madanlal Thole and wife Meena Ramanlal Thole were selling kerosene jointly from the same house premises; and (iii) It was noticed that the

two retail kerosene licences were issued in the same family in the name of husband and wife. The petitioner was, therefore, called upon to explain as to why action of suspension / cancellation of licence issued to her, should not be initiated and why criminal prosecution should not be launched against her.

5. The petitioner replied the said show cause notice on 10th November, 2008, *inter alia*, contending that she is doing the business of selling kerosene since last fifteen years, by adhering to the terms and conditions of the licence. She is selling the kerosene in the shop owned by Mahaveer Amarchand Gangal, which she has taken on rent. The objection in the notice about two retail kerosene licences in the same family in the names of husband and wife is not correct, as Ramanlal Madanlal Thole was her erstwhile husband and a decree of divorce is passed in her favour and their marriage is dissolved by the court and they are residing separately from the last five years. Decision of the competent civil court in divorce case was annexed along with the reply. She contended that the Panchanama prepared by the Supply Officer / Naib Tahildar is false. She, therefore, prayed for dropping of the proposed action against her.

6. Respondent No. 2 – the District Supply Officer, by impugned order dated 5th February, 2009, cancelled retail

kerosene licence bearing No. 86/1995 issued in favour of the petitioner and forfeited the deposit amount. The petitioner unsuccessfully challenged the order of the District Supply Officer by approaching the Deputy Commissioner (supply) by filing Appeal and before the Hon'ble Minister for Food, Civil Supply and Consumer Protection, by filing Revision Petition No. 222 of 2010. Hence the present writ petition.

7. Heard learned advocate for the petitioner and learned AGP for respondents – State.

8. Learned advocate for the petitioner submitted that the factual position on record that divorce has taken place between the petitioner and her husband was not taken into consideration by the authorities while passing the impugned orders. The impugned order is passed on different grounds than those mentioned in the show cause notice. There is total non application of mind on the part of respondent No.2 in passing the impugned order. He failed to consider the contentions of the petitioner in the proper perspective. For more than fifteen years, the petitioner is selling kerosene without there being any complaint. He further submitted that though while passing the order reliance is placed in the Government Resolution dated 22nd February, 1990, however, the said Government Resolution does

not spell out the consequence, which would follow in case of breach of any criteria / conditions mentioned in the said Government Resolution. He, therefore, submitted that the impugned order cannot sustain and the same is liable to be quashed and set aside.

9. Learned AGP, on the other hand, supported the impugned order. By relying on the affidavit in reply filed on behalf of respondents No. 1 to 3, by the Assistant District Supply Officer, he submitted that during the course of inquiry conducted by the deponent, it was found that the petitioner and her husband Ramanlal Madanlal Thole were carrying on business of selling kerosene under their respective kerosene licences from the same house premises and they both were residing in the same house. He, therefore, submitted that there is no substance in the petition and the petition is liable to be dismissed.

10. It is clear from the contents of the show cause notice (Exhibit-C), issued to the petitioner that the petitioner was called upon to explain as to why her retail kerosene licence should not be suspended and / or cancelled and prosecution should not be initiated against her, as she and her husband are selling retail kerosene pursuant to respective retail kerosene licenses issued in their favour, from the same house and two licenses were

issued in the same family in the names of husband and wife. The petitioner, though tried to explain in her reply to the show cause notice that she and her husband are residing separately, pursuant to the decree of divorce issued on 10th June, 2008 and hence her licence should not be suspended and / or cancelled, however, at the time of the surprise inspection, it was found that the petitioner and her husband were residing together in the same house and were selling kerosene from there. Nothing is placed on record by the petitioner in support of her contention that she was selling kerosene from the shop owned by Mahaveer Amarchand Gangwal, which she has taken on rent. *Prima facie*, it appears that the decree of divorce is obtained by the petitioner and her husband only to avoid cancellation of their respective retail kerosene licences.

11. It is not possible to agree with the submission of learned advocate for the petitioner that the Government Resolution dated 22nd February, 1990 (Exhibit-K), though states in clause 5 (b) that the licencing authority shall take precaution that two licences should not be issued in one family i.e. husband – wife etc., however, this Government Resolution does not provide consequence if the licencing authority issues two retail kerosene licences in the same family. Since the retail kerosene licence was

issued to the petitioner contrary to the directions given in the said Government Resolution, the same was required to be cancelled as a necessary consequence of breach of conditions mentioned in the said Government Resolution.

12. I do not agree with the submission of the learned advocate for the petitioner that the retail kerosene licence is cancelled on the grounds different than the ones mentioned in the show cause notice. The show cause notice specifically informs the petitioner that two retail kerosene licences were found to have been issued in the same family in the names of husband and wife and it was also informed to the petitioner that the petitioner and Ramanlal Madanlal Thole (her husband) both were selling the kerosene jointly from their residential house.

13. The impugned order states that in view of the Government Resolution dated 22nd February, 1990, more than one retail kerosene licence cannot be issued in one family. The petitioner was issued retail kerosene licence in the year 1995, whereas her husband was issued retail kerosene licence No.38/1994 in the year 1994. The petitioner has violated the terms and conditions of the Maharashtra Kerosene Dealers' Licencing Order, 1966 and there is also violation of Government Resolution dated 22nd February, 1990. In that view of the matter, respondent No. 2 was

justified in cancelling the retail kerosene licence issued in favour of the petitioner. I do not find any illegality or perversity in the order impugned in the present writ petition. The writ petition being devoid of any substance is dismissed with no order as to costs. Rule stands discharged.

[NITIN B. SURYAWANSHI]
JUDGE

drp/wp978-14