



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 19.07.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.No.16 of 2013 and M.P.Nos.1 & 2 of 2013

Tamil Nadu Kerosene Dealers' Association
rep. by its President A.Kannabiran
87, Old No.14 Karneeswarar Pakoda Street,
Chennai-600 004.

... Appellant/Petitioner

-vs-

1.The Government of Tamil Nadu,
rep. by its Secretary,
Co-operation, Food and Consumer
Protection Department,
Fort St. George,
Chennai 600 009.

2.The Commissioner,
Civil Supplies and Consumer Protection Department,
Chepauk, Chennai 600 005.

3.The General Manager,
State Level Co-ordinator,
Indian Oil Bhavan,
Nungambakkam,
Chennai 600 034.

... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order passed by His Honourable Mr.Justice K.K.Sasidharan dated 01.11.2012 and made in W.P. No.22660 of 2011.

Prayer in W.P. No.22660 of 2011: This Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari calling for the records of the records of the respondents relating to the order of the 1st respondent in G.O. (Rt) No.75 Co-operation Food and Consumer Protection (C2) Department dated 08.09.2011 and the Communication of the 2nd respondent in Rc.Lr.No.K4/ 22193/ 2010 dated 23.9.2011 and quash the same.



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For Appellant : Mr.K.Doraisamy,
Senior Counsel for
Mr.Muthumani Doraisami

For Respondents : Mr.T.Arunkumar,
Government Advocate
for R1 & 2

Mr.Abdul Saleem for R3

JUDGMENT

(Judgment of the Court was delivered by T.RAJA, J.)

This writ appeal has been directed against the impugned order dated 01.11.2012 passed by the learned Single Judge in W.P. No.22660 of 2011.

2.Assailing the impugned order, Mr.K.Doraisamy, learned senior counsel representing for Mr.Muthumani Doraisami, learned counsel appearing for the appellant submitted that the appellant is an Association of Kerosene dealers and that the Members of the Association made a representation to the Government of Tamil Nadu, the first respondent herein, which, in exercise of the powers conferred under the provisions of the Essential Commodities Act, had issued a Government Order in G.O. Ms. No.442, Food and Co-operation Department dated 05.09.1980 fixing the handling/leakage loss for kerosene at 1% of the cost of 1 kiloliter. Learned senior counsel submitted that from the date of issuance of the said G.O. till the date of filing the above writ petition, the appellant and others were enjoying the handling loss at 1%. Even though the appellant and others have been sustaining more than 1% handling loss, the members were satisfied with the 1% benefit given by the Government. While so, the first respondent passed another Government Order in G.O. Ms. No.96, Co-operation, Food and Consumer Protection Department dated 24.05.2000 by reducing the handling loss from 1% to 0.25%. Based on the above said G.O., the second respondent issued a Circular reducing the handling loss from 1% to 0.25% without assigning any valid reason. Challenging the said G.O., the appellant and others filed a batch of writ petitions in W.P. Nos.6575 of 2001 etc. and they were allowed by common order dated 20.07.2010 by quashing the above G.O. with a direction to the committee constituted by the Government under G.O. Ms. No.285, Co-operation, Food and Consumer Protection Department dated 18.12.1998 to examine the question relating to the physical component of leakage allowance as per the reference made in the said Government Order and submit a report within a period of four weeks and a direction to the members Association including the President and the Secretary of Tamil Nadu



Petroleum Dealers' Association to co-operate for submission of report within the time frame and the Government to issue appropriate order or notification in respect of physical component of leakage allowance due to storage and handling loss for the wholesalers and by permitting the appellant and others to enjoy the leakage allowance at 1% towards physical component. In spite of the above direction, no member whatsoever was given any opportunity to put forth his views and grievances. Finally, G.O. (Rt) No.75 Co-operation, Food and Consumer Protection (C2) Department dated 08.09.2011 was passed simply reiterating the earlier order reducing handling loss from 1% to 0.25%. Therefore, the appellant association was constrained to come to this Court challenging the above G.O. (Rt) No.75 and communication of the second respondent in RC.Lr.No.K4/22193/2010 dated 23.09.2011. However, the learned Single Judge, holding that reduction in handling loss was made primarily on account of the loss fixed by the Government of India with respect to petroleum products and that kerosene is termed as Class "B" petroleum product and that the Government of India re-fixed the handling loss of petroleum products at 0.25% with effect from 1st August 2005, has dismissed the above writ petition. Learned senior counsel further submitted that the approach adopted by the learned Single Judge is un-justified for two reasons. Firstly, when the evaporation of kerosene takes places at the time of handling and unloading, which resulting in more than 1% loss, kerosene cannot be compared with petroleum products. Secondly, when this Court has given a specific direction to all the members including the President and Secretary of Tamil Nadu Petroleum Dealers' Association to co-operate for submission of report within the time frame and after submission of the report by the Committee, it should be given to the members of the appellant association, the same has not been done. Therefore, the appellant association are not able to put forth their grievances properly and hence, they have been put to face the prejudice. As the Committee has submitted the report reducing the handling loss from 1% to 0.25%, prejudice will be caused to the members of the appellant association. Since the respondents' justification for reducing handling/leakage loss from 1% to 0.25% is unsustainable, a direction may be issued to the respondents to furnish a copy of the report and a liberty may be given to challenge the same.

3.Opposing the above prayer, learned Government Advocate appearing for the respondents submitted that the appellant association did not take any step to include their names to be heard before the Committee.

4.Heard both sides.

5.It is pertinent to extract a relevant para of the impugned



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order passed by the learned Single Judge as under:

'19.The reduction in handling loss was made primarily on account of the loss fixed by the Government of India with respect to petroleum products. Kerosene is termed as Class "B" petroleum product. The Government of India re-fixed the handling loss of petroleum products at 0.25% with effect from 1 August 2005. The report submitted by the committee clearly gives an indication that the Diesel and Kerosene belong to Class"B" petroleum products with flash point at 23 degrees centigrade and above but below 65 degrees centigrade. The Explosive Limits for Diesel and Kerosene is found to be the same and therefore, the Committee wanted the handling loss allowed for Diesel to be applied for Kerosene also.'

6.A perusal of the above order shows that the reduction in handling loss was made primarily on account of the loss fixed by the Government of India with respect to petroleum products and the report submitted by the committee given an indication that the Diesel and Kerosene belong to Class"B" petroleum products with flash point at 23 degrees centigrade and above but below 65 degrees centigrade. Moreover, the learned Single Judge has rightly found that the report submitted by the Committee is not under challenge and that the report was made pursuant to the order passed by the learned Single Judge and that the Government have only accepted the report submitted by the Committee and the Government have not made any modification to the report submitted by the committee.

7.Besides, it is pertinent to note two other vital factors; firstly, the allowance of leakage/handling loss has been in vogue for nearly 31 years and it is not only in the State of Tamil Nadu, but also in other States. While so, the leakage/handling loss was provided to an extent of 1% per kiloliter. However, the Government issued G.O. Ms. No.96, Co-operation, Food and Consumer Protection Department, dated 24.05.2000, reduced the handling loss from 1% to 0.25%. Even though the said G.O. has been passed on 24.05.2000, the same has not been given effect to till 16.03.2001. The second respondent, based on the above said G.O. issued a Circular on 17.03.2001 reducing the handling loss from 1% to 0.25%. Secondly, the price of diesel is now at Rs.95/- per liter, whereas the price of kerosene is now at Rs.35/- per liter, therefore, in our considered view, fixing of leakage price at Rs.0.25/- per liter to kerosene also is in order.

8.Thus, for the reasons stated above, we are not able to find any error or infirmity in the said order passed by the



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learned Single Judge. Accordingly, this appeal stands dismissed. Consequently connected M.Ps are closed. No costs.

Sd/-
Assistant Registrar(CS IX)

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Sub Assistant Registrar

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To

- 1.The Secretary,
The Government of Tamil Nadu,
Co-operation, Food and Consumer
Protection Department,
Fort St. George,
Chennai 600 009.
- 2.The Commissioner,
Civil Supplies and Consumer Protection Department,
Chepauk, Chennai 600 005.
- 3.The General Manager,
State Level Co-ordinator,
Indian Oil Bhavan,
Nungambakkam,
Chennai 600 034.

+1cc to Mr.Abdul Saleem, Advocate SR.No. 34483
+1cc to M/s.Muthumani Doraisami, Advocate SR.No. 34537

W.A.No.16 of 2013 and M.P.Nos.1 & 2 of 2013

PVS(CO)
B.VC(23.08.2021)