IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.01.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

WP.No.31955 of 2015 and
MP.No.1 of 2015

M/s.K.T.K.Enterprises,
Rep. by its Proprietrix,
M.Umamaheswari,
Spoil Island, Port Fishing Harbour,
Cuddalore & District. ... Petitioner

Vs

1.The Commissioner of Fisheries,
Fisheries Department,
D.M.S. Complex, Thenampet,
Chennai-600 006.

2.The Deputy Director of Fisheries (Regional),
Varadharajan Nagar,
Behind KNC Women's College,
Semmandalam, Cuddalore-607 001.

3.The Assistant Director of Fisheries (Marine),
Fishing Harbour Complex,
Cuddalore Port-607 003.

4.The Indian Oil Corporation Limited,
Indian Oil Bhavan,
Marketing Division,
139, Nungambakkam High Road,
Chennai-600 034. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the entire records connected with impugned order of the 1st Respondent in Na.Ka.No.12747/J4/2014 dated 19.06.2015 and quash the same consequently direct the Respondents to grant Sales tax exemption for High speed diesel oil being supplied to the Fishermen from the Petitioner's filling station par with the other nearby filling stations.

For Petitioner	:	Mr.G.Balamanikandan
For Respondents	:	Mr.Veda Bagath Singh (for R1 to R3) Special Government Pleader Mr.V.Ananda Natrajan (for R4)

O R D E R

The petitioner has set up a private bunk for high speed diesel oil and seeks an exemption from sales tax invoking G.O.Ms.No.130 dated 29.10.2004. Similar relief was sought by other identically placed filling bunks, that came to be rejected by a learned single Judge on the ground that the aforesaid Government Order was only to apply only in respect of Government operated bunks and bunks located in certain specified locations where the Government bunks have not been set up. Private filling bunks had sought identical relief that had come to be rejected by this Court.

2.A Writ Appeal was filed in the case of one such operator in W.A.No.980 of 2020 and by an order dated 02.02.2021, the First Bench has held as follows:

'The matter pertains to a Government Order providing exemption to certain government operated agencies and not extending the exemption to

private diesel bunk operators. The writ petitions filed by the appellant herein and others of his ilk have been dismissed on the ground that they were unmeritorious.

2.The appellant says that the appellant operates a private diesel bunk, but the appellant supplies diesel only to fishermen and not to any other person. The appellant claims that since the appellant's operations are restricted to fishermen who ought to be regarded as a separate and favoured class, the exemption should also have been extended to the appellant. The other writ petitioners were apparently similarly placed private diesel bunk operators.

3.The appellant refers to a previous Division Bench judgment of this Court rendered on November 26, 2013 in W.A.Nos.1798 to 1800 of 2011. By such judgment, the writ petitions filed by authorized and recognized private diesel outlets seeking supply of diesel at par with government operated outlets were allowed. The State was the appellant.

4.While dismissing the writ appeals, the Division Bench observed in the order of November 26, 2013, inter alia, as follows:

> *"24.Similarly, as rightly observed by the learned single Judge, when such restrictions were not imposed by the Government Orders, under the guise of memo/recommendations, the respondent cannot impose such restrictions. From the facts placed before us, we also see that there is more demand in the areas where Authorised Private Dealers operate and the Government outlets are unable to sell their indented quota. Therefore, the argument that when sale is made, the revenue goes directly to the Government Agency cannot be applicable to the present facts. Because of the restriction imposed, the objects of the Government Orders are defeated. Not even a single case where there is misuse of the exemption in the sale made by Authorised Private Outlets is reported before this Court. Therefore, mere apprehension cannot be the ground for imposing restrictions, not contemplated under the Government Orders. The indent itself contains check and balance measures.*
>
> *25.Therefore concurring with the view of the learned single Judge and keeping in mind the public interest, we hold that the actions of the appellants are discriminatory and arbitrary and*

affirm the Common order dated 15.06.2010. However, we make it clear that the Government if in public interest decides to restrict the tax exemption for sale of diesel to Government operated out lets alone, necessary modifications have to be brought about in the Government Orders."

5.The appellant asserts that the matter dealt with by the Division Bench did not preclude any exemption being granted to private diesel bunk operators who supply diesel exclusively to fishermen. Indeed, the last sentence of paragraph 25 of the Division Bench judgment is cited to indicate that the State was left free to grant exemption to government operated outlets. The appellant submits that as a private diesel bunk operator supplies exclusively to fishermen, it is the same duty which is discharged by the appellant as a government outlet. As such, the appellant contends, when it is not open to the appellant to sell diesel to any or sundry who may approach the appellant, the exemption could not have been confined only unto certain government agencies and not extended to other outlets, albeit private, but operating exactly as the government outlets.

6.The judgment and order impugned dated February 28, 2020 have also come in for criticism from the appellant on the ground that the Writ Court found that there was an element of public interest involved. The appellant seeks to suggest that the element of public interest involved would weigh with the extension of the exemption to the appellant and other private diesel bunk operators.

7.The impugned Government notification in this case reflects a policy adopted by the State. It is always open to the State to make a distinction between several classes of persons and treat them differently as long as there is some justification therefor. It is equally open to the State to not treat different classes of persons differently and treat them on the same basis. This, essentially, is a matter of policy. Merely because government outlets operating for the same purpose as the present appellant had been granted exemption does not imply that private parties carrying out the same duties would also be entitled to exemption. Apart from the fact that the government granting or not granting exemption to another government body is of no great significance at the end of the day, the anomaly or aberration would have been apparent if any other private body had been extended the courtesy and the appellant or others like the appellant denied the same. In this case, a *distinction has been made between the government outlets and other outlets and all other outlets have been treated at par notwithstanding the fact that the appellant and others similarly placed supply diesel only to fishermen and do not sell it otherwise. It was possible for the State, in its wisdom, to make a distinction between government outlets and other outlets not being government outlets. It was equally possible for the State to make a distinction between private outlets supplying only to fishermen and other private outlets supplying to all and sundry. That the State did not make such a distinction is a matter of policy and within the exclusive domain of the State. Judicial review will not extend to such an aspect of administrative functioning to supplant the Court's decision over the legislature's or the executive's.'*

3.The order of the learned single Judge rejecting the relief sought for has come to be confirmed in writ appeal and this order applies on all fours to the case of the present petitioner as well.

4.In light of the discussion as above, there is no merit in this writ petition and the impugned order is confirmed. This writ petition is dismissed. No costs. Connected miscellaneous petition is closed.

11.01.2023

vs
Index : Yes / No
Speaking Order
To
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Chennai-600 006.

<u>Dr.ANITA SUMANTH,J.</u>

vs

2.The Deputy Director of Fisheries (Regional),
Varadharajan Nagar,
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Semmandalam,
Cuddalore-607 001.

3.The Assistant Director of Fisheries (Marine),
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