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5&6. 27-03-2024

MAT 354 of 2024
CAN 1 of 2024
CAN 2 of 2024

sg Ct. 8

West Bengal Kerosene Agents' Welfare Association
Versus
Union of India & Ors.

With

CPAN 502 of 2024

West Bengal Kerosene Agents' Welfare Association
Versus
Pankaj Jain & Anr.

Mr. Shyamal Sarkar, Sr. Adv.
Mr. Ramesh Dhara, Adv.
Miss. Mousumi Chowdhury, Adv.
...for applicant in CPAN 502/2024
Mr. Atarup Banerjee, Adv.
Ms. Sarda Sha, Adv.
...for the applicant in
CAN 2 /UOI
Mr. Amritlal Chatterjee, Adv.
...for the State

1. CAN 2 of 2024 is an application for modification of the order dated 28th February, 2024.
2. Mr. Atarup Banerjee, learned Counsel appearing on behalf of the Union of India has submitted that a policy decision has been taken by the Government of India, Ministry of Petroleum and Natural Gas to reduce the consumption of kerosene for a clean environment. However, it has been fairly submitted that the memorandum dated 9th February, 2021 and the subsequent documents disclosed in this petition were not placed before the learned Single Judge when the judgment was delivered on 31st January, 2024. The documents disclosed in this petition from page 65

onwards would show the Government was contemplating reduction in the allocation of PDS kerosene to States/UTs for the financial year 2023-24.

3. Mr. Banerjee has submitted that the applicant has found the requisition sent by the State of West Bengal for allotment of kerosene to be unusually high.
4. However, we do not find any such document or communication from the applicant calling for explanation or requiring any clarification with regard to requisition sent by the State. It is an admitted position that till the impugned judgment was passed, the applicant on the basis of the interim order dated 28th October, 2016 was allocating kerosene as per requisition sent by the State of West Bengal without raising any disputes or query. In our order dated 28th February, 2024, we have only made an interim arrangement till the Government takes a final decision on the requisition.
5. In view thereof, we are not willing to modify the interim order having regard to the fact that the applicant has not raised any objection earlier with regard to requirement of kerosene and the requisition sent by the State month by month until December, 2023 has not been questioned by the applicant inasmuch as we do not find that the applicant has sought for justification on the quantities requisitioned after the impugned order was passed.
6. Mr. Shyamal Sarkar, learned Senior Counsel has referred to paragraph 7 of the impugned judgment where the submission of Mr. Sirsanya Bandyapadhyay was

summarized. It is submitted that there are many instances where the allottees were unable to refill the cylinders as they were unable to bear cost of refilling of cylinders.

7. The State has not challenged the order under appeal. It was for the State to ensure supply of the required kerosene quantity in consultation with the Ministry of Petroleum. The State has, however, supported the applicant and has submitted that all necessary details have been furnished to the concerned Ministry justifying the quantities requisitioned and for taking an appropriate decision in this regard.
8. Be that as it may, it appears that a specialized body was constituted to frame appropriate guideline and policy regarding allocation of kerosene oil to State Governments. In paragraph 12.1 of the impugned judgment the learned Single Judge has referred to an assessment report on survey of household cooking fuel usage and willingness to convert to LPG of June 2016 by the Petroleum Planning and Analysis Cell and other details with regard to LPG coverage in the State of West Bengal vis-à-vis the requirement of kerosene.
9. The court should be extremely chary in interfering with policy decision and more so when it concerns the environment as the pollution level is rising alarmingly and a time would come when our existence would be at stake.
10. For all future requisition commencing from May the State must make available all required data in justification of kerosene requirement for each month and if any policy

decision is framed in the meantime, some guidelines should be made by the Union of India in dealing with the future requisition of the State as we cannot ignore the data disclosed by the State in paragraph 7 and the affidavit of the applicant referred to in paragraph 12.1 of the impugned order.

11. It is obligatory on the part of the Union of India as well as the State to ensure clean environment and to regulate supply of Kerosene in such a manner so that the persons who are likely to be affected if such quantities are reduced drastically and withdrawn suddenly without considering the welfare of such needy and poor persons as canvassed by the State. Their need may also be considered and if justified by the State the supply cannot be suddenly stopped.
12. We make it clear that the arrangement is purely temporary in nature and the State must send requisition adequately in advance with justification to the respondent no.2 and the decision with regard to supply shall be taken by the competent authority within a period of fortnight from the date of such requisition. The balance quantity as directed by the interim order shall be completed within a period of ten days from date.
13. We do not feel it necessary to go into other issues at this stage as it is a matter of Union of India and the State Government to take a decision with regard to allotment of kerosene depending upon the criteria, requirement and the policy in this regard.

14. We feel that in view of the aforesaid order, the appeal can be disposed of and is disposed of with the observation that the issues not gone into in this appeal shall not operate as resjudicata in future litigation if such issue comes up for consideration. This court has not adjudicated on the documents disclosed in the application for modification.
15. The appeal along with connected applications and the contempt application are, accordingly, disposed of. However, there shall be no order as to costs.
16. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Soumen Sen, J.)

(Uday Kumar, J.)