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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2024

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THE HON'BLE Mr. JUSTICE **C.V.KARTHIKEYAN**

W.P.No.16996 of 2019

and

W.M.P.Nos.16556 & 16558 of 2019

M.Kamalakaran

.. Petitioner

Vs.

- 1.The Principal Secretary to Government
Cooperative Food and Consumer Protection (C2) Department,
Fort St. George,
Chennai – 600 009.
- 2.The Joint Commissioner of Civil Supplies,
Chepauk, Chennai – 600 005.
- 3.The Deputy Commissioner of Civil Supplies,
(City), North, Chepauk,
Chennai – 600 005.
- 4.The Assistant Commissioner of Civil Supplies,
V.O.Chidambaranar Zone,
No.14, More Street,
Parry's Chennai – 600 001.

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned G.O issued by the 1st respondent in



G.O.(2D). No.29, Co-operative, Food and Consumer Protection (C2) Department dated 28.05.2019 and quash the same and consequently, direct the respondents to renew the petitioner's kerosene retail registration certificate in License No.1/2005-2007 in Shop No.AR087.

For Petitioner .. Mr.C.Prakasam

For Respondents .. Mr.M.Rajendiran,
Additional Government Pleader.

ORDER

This writ petition has been filed in a nature of Certiorarified Mandamus, calling for the records of the Government order in G.O.(2D).No.29, Co-operation, Food and Consumer Protection (C2) Department dated 28.05.2019 issued by the 1st respondent, the Principal Secretary to Government, Cooperation, Food and Consumer Protection (C2) Department, Chennai and to quash the same. The petitioner further requests renewal of the kerosene retail registration certificate granted in License No.1/2005-2007 in Shop No.AR087.

2.The learned counsel for the petitioner stated that the consequential



reliefs sought namely, renewal of the kerosene retail registration certificate no longer survives, since as a policy such certificate has now been stopped issuing by the respondents.

3.The only issue is with respect to imposition of fine in the aforementioned Government order. The writ petitioner, M.Kamalakaran was having a kerosene retail registration certificate and doing kerosene business from the year 2005. According to the respondents, as stated in the impugned order, he was a retail registration certificate holder which was issued under the Tamil Nadu Kerosene (Regulation of Trade) Order 1973. His license comes under the aforementioned regulations and does not come under the Tamil Nadu Scheduled Commodities (Regulation and Distribution of Card System) Order 1982.

4.According to the writ petitioner, he was doing retail kerosene business. On 07.05.2015 the flying squad officials of the Commissioner of Civil Supplies inspected the business premises and thereafter, they had issued a show cause notice containing four charges against the petitioner herein namely,



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“1. Not registered the stock of 600 liters of kerosene received from the wholesaler.

2. Distribute the kerosene to the cancelled cards and LPG holder cards by bogus billing.

3. Not produced the stock Register and bills at the time of inspection.

4. Kerosene distributed conical measures are not sealed after 2010.”

5. The petitioner was given due opportunity. He had given an explanation. The petitioner had thereafter, filed an appeal. The appeal was rejected. He filed revision before the Government. The revision was rejected and finally, the impugned order came to be passed. A perusal of the charge no.1 shows that the petitioner distributed 1769 litres of PDS kerosene namely, 1769 litres @ Rs.13.70/- per litre and charge no.2 shows that the petitioner distributed kerosene to those whose cards had already expired and those who have been supplied with LPG cylinders. The kerosene had been supplied by the respondents for distribution to the actual card holder, who required kerosene to light fire in their kitchen for cooking purpose. It is urged that by this sale of 1769 litres to those who were not authorised to



purchase the same and those who already had LGP cylinder, the card holders had been deprived of their right to purchase PDS kerosene. Apart from that particular charge, it is alleged that the petitioner did not produce bills and ledgers at the time of inspection.

6.The learned counsel for the petitioner assailed the impugned order on the ground that during enquiry, the respondents did not enquire with the card holders, as to whether they were actually supplied with kerosene or not. According to him, the petitioner was supplied with 600 litres of kerosene of every month and if it is alleged that he had sold 1769 litres of PDS kerosene, it is contended by the learned counsel that such a contention is improbable, since it would mean that he had supplied three months supply of kerosene and that not even one card holder had been supplied with kerosene in a proper manner. It is for that reason the learned counsel stated that the card holders had not been enquired by the respondents.

7.But however, the manner in which the petitioner had actually distributed or sold the kerosene would be to the exclusive knowledge of the petitioner and he could discharge that burden only by producing the bills



and stock register and ledgers for the same. He had not produced those records before the respondents. There was a shortfall of 1769 litres of PDS kerosene. The respondents cannot go around and search for the card holder enquiring them whether they had purchased kerosene from the petitioner herein. That would be beyond the scope of enquiry, particularly since the petitioner had not discharged his initial burden to produce the bills, stock register and ledgers.

8.The further allegation against the petitioner is that after the year 2010 the conical measures were not sealed. A specific allegation was that he had made bogus bills with respect to sales. These are very serious allegations. The contention of the learned counsel that the card holders had not been enquired cannot be accepted, since it is only an after thought.

9.In the impugned order, the contention raised by the petitioner had been reduced in writing and in the grounds to the writ petition, no such ground had been raised.

10.In the grounds raised by the petitioner, challenging the impugned



order there is no ground that the actual card holders should be examined and had not been deliberately examined by the respondents. It had only been stated by the petitioner that there had been no proper verification and there had been no recording of evidence and that the enquiry was conducted arbitrarily and that he had not been provided with the list of card holders, who had been issued kerosene in a wrongful manner.

11.The list of purchasers would be very much available with the petitioner. He had not produced the said ledgers. An inference could be drawn that he not produced the same only because they consisted of names to whom the kerosene should not have been sold.

12.The petitioner had been imposed only with fine. His license had not been cancelled. Owing to the change in policy, he is not a license holder. But his liability to the respondents is always exists. Judicial review would lie only against the procedure adopted and not on the order of the authority. Opportunity had been granted to the petitioner. He had in fact filed written arguments. They had also been considered and a detailed order had been passed. No ground had been raised that the petitioner was denied



fair opportunity of being heard during the course of enquiry.

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13. In view of the above observations, I am not inclined to interfere with the impugned order. Accordingly, this Writ Petition stands dismissed.

No costs. Consequently, connected Writ Miscellaneous Petition are closed.

08.11.2024

Index: Yes/No

Internet: Yes/No

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C.V.KARTHIKEYAN,J.

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