

Fokatlal Prabhulal Bhatt & Others

v.

State of Gujarat & Others

aSHOK BHAN and S.H. KAPADIA,JJ.,

(Supreme Court Of India)

Civil Appeal No. 10136-184 Of 2003 | 15-09-2004

1. The appellants were engaged in the sale of kerosene as wholesale dealers having licences under the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981 (hereinafter referred to as "the Licensing Order of 1981"). Their licences as wholesale dealers in PDS kerosene were to expire on 31-12-2000. They had applied for renewal before the expiry of the period of licence and continued till 30-7-2002 under various temporary orders passed by the licensing authority from time to time. The State Government issued circulars from time to time with a view to wipe out the wholesale dealers who were not appointed by any of the oil companies. These circulars dated 30-7-1988, 4-10-1990, 3-4-1995, 6-1-1997, 29-8-1997, 22-1-1999, 5-5-2001 and 19-6-2001 were quashed by a Division Bench of the High Court in LPAs Nos. 539-54 of 2001.
2. The Government of Gujarat then came out with three notifications dated 31-12-2001, 30-3-2002 renewing the licences by three months each and a further notification dated 30-6-2002 for renewal of licence for one month i.e. up to 30-7-2002. These notifications were challenged in the High Court of Gujarat and were quashed by a Single Judge being contrary to the statutory provisions i.e. Clause.5 of the Licensing Order of 1981 vide judgment dated 10-7-2002. The High Court directed the authorities to decide the applications for grant of renewal of licences in accordance with law. This judgment became final as the State Government did not file any appeal against this judgment.
3. According to the appellants, once these circulars were quashed, all pending applications for renewal of licences had to be dealt with as per Clause.5 of the Licensing Order of 1981, even though it was challenged by only 10 persons. The Government of Gujarat thereafter on 31-7-2002 issued the Amendment Order of 2002. By insertion of sub-clause (18A) in Clause.2 of the Licensing Order of 1981 by Amendment Order of 2002, "PDS kerosene wholesale dealer" was defined to mean "a dealer appointed by any of the oil companies engaged in marketing of PDS kerosene, as per the authorisation from the Government of India". It is submitted on behalf of the appellants that the impugned order had two different effects on two groups of kerosene wholesalers; (i) those who held valid licence as on the date of the impugned Amendment Order; and (ii) those whose

applications for grant of renewal of licence were expiring on 31-12-2000, which was extended for three months vide notification dated 31-12-2001 and again for a further period of three months vide notification dated 30-3-2002. Simultaneously, with the amendment in the Licensing Order of 1981, the State Government issued a circular dated 31-7-2002 and decided not to renew the licences of those who are not covered under the aforesaid definition of "PDS kerosene wholesale dealer", and further to cancel the existing licences of such persons.

4. The appellants and some other kerosene wholesale dealers filed Special Civil Application No. 7190 of 2002 and batch in the High Court of Gujarat challenging the legality and validity of the Amendment Order dated 31-7-2002, the circular of the same date and also the decision therein. The appellants prayed for quashing and setting aside of the order dated 31-7-2002 passed by the Government of Gujarat deciding not to renew the licences of the wholesale dealers who were not the agents from the companies from 1-8-2002 onwards in accordance with R.5 of the Licensing Order of 1981; for a direction to renew the licences of the appellants as wholesale dealers in kerosene for a period of five years from the date of their applications; and to allot the requisite quota of kerosene to them.

5. The learned Single Judge as well as the Division Bench of the High Court of Gujarat in letters patent appeals upheld the validity of the amending Order prospectively. Those who were holding valid licence on the date of the Amendment were allowed to continue as wholesale dealers until the date of expiry of their valid licence. The respondents were directed not to create any obstructions or interference in their functioning on account of the Amendment of 2002 or the decision of cancellation of the said licences. But the writ petitions filed by the appellants whose applications for grant of renewal of licence were expiring on 31-12-2000 and were extended twice for three months each, were dismissed in toto holding that they are not entitled to any of the reliefs. Aggrieved against the aforesaid orders of the High Court the present appeals are before us by way of special leave.

6. The special leave petitions came up for hearing on 13-10-2003 when this Court issued limited notice confining to the question as to why the judgment of the High Court be not suitably modified so as to allow the licences of the petitioners (the appellants herein) to remain in operation for a period of five years with effect from the date the licences became last time due for renewal.

7. The appellants as well as the State of Gujarat have filed the list of the wholesale dealers mentioning therein the date of expiry of the licences which have expired on 31-12-2000.

Licences of most of the appellants would expire on 31-12-2005. A few of them have already expired while a few are to expire on 31-12-2006 or a little later.

8. Keeping in view the facts of the present case as well as the investment made by the appellants, we dispose of these appeals as a one time measure without laying down any law or creating precedent and allow the licences of the appellants to remain in operation for a period of five years starting from 1-1-2001 and ending on 31-12-2005. This time frame shall be uniformly applicable to all the appellants before us irrespective of the fact whether the licence has already expired or would expire after 31-12-2005. Those whose licence period would expire after 31-12-2005 will also cease to be dealers after 31-12-2005.

9. This order is confined to only 49 appellants who are before us and shall not enure to the benefit of anybody else.

10. The judgment and the reasoning given therein to uphold the amending Order of 2002 by the High Court is upheld except to the extent of concessions made by us in favour of the appellants keeping in view the peculiar facts of the case.

11. The civil appeals stand disposed of accordingly. No costs.