

SUPREME COURT OF INDIA

Ranjit Kumar Murmu

Vs.

Lachmi Narayan Bhomroj

C.A.No.7263 of 2012

(G.S.Singhvi and Sudhansu Jyoti Mukhopadhaya JJ.)

15.04.2013

JUDGMENT

SUDHANSU JYOTI MUKHOPADHAYA, J.

1. This appeal has been preferred by the appellant against the Judgment dated 2nd February, 2012 passed by the Division Bench of the Calcutta High Court in A.P.O.T No.237 of 2010. The Division Bench while dismissing the appeal preferred by the appellant held that the Principal Secretary, Food and Supplies Department is not an appellate authority with respect to an order passed under Paragraph 11 of the West Bengal Kerosene Control Order, 1968 and thereby affirmed the order passed by the learned Single Judge.

2. The relevant facts of the case are as follows: One Purushottam Das Jhunjunwala was issued with a Kerosene Dealer licence in the year 1997 and was carrying on his business in the name of M/s Lachmi Narayan Bhomroj, as a sole proprietor. Upon his death, his heirs were temporarily allowed to carry on kerosene business under the same name as per the provisions of West Bengal Kerosene Control Order, 1968 (hereinafter referred to as the 'Control Order').

On or about 6th March, 2006, a fresh licence was issued to the partnership firm of the legal heirs of said Purushottam Das Jhunjunwala (respondents herein) on compassionate ground.

Even though the licence was issued on 6th March, 2006, no supply was effected. After much persuasion from the part of respondents the authority

allotted a quota of 72 K.L. of Kerosene Oil per month as against the quota of 168 K.L. per month originally allotted to their late father.

3. Partners of M/s Lachmi Narayan Bhomroj made representation citing the above matter before the concerned authorities. The Director of Consumer Goods, Food and Supplies Department, Government of West Bengal passed an order on 12th August, 2009 whereby the quota of 168 K.L. of Kerosene Oil was restored in favour of respondents. By virtue of this restoration while respondents' quota got enhanced there was corresponding reduction in the allocation to the appellant.

4. Being aggrieved by the reduction of allocation, the appellant filed a Writ Petition No. 899/09 before the Calcutta High Court challenging the order dated 12th August, 2009 which was disposed of by a learned Single Judge on 4th September, 2009 directing the Joint Director of Consumer Goods to hear the matter and take a decision. In an appeal being APOT No. 367 of 2009 against the said order the Division Bench modified the order and directed the District Magistrate, Purulia, the competent authority under the Control Order to hear and pass an appropriate order.

5. Pursuant to the aforesaid order, the District Magistrate, Purulia, passed an order dated 6.10.2009 upholding the allocation of monthly quota made to both the agents by Director of Consumer Goods vide letter dated 12th August, 2009.

6. Being aggrieved, the appellant preferred a writ petition No. 1093/2009 challenging the order of the District Magistrate. When the matter was taken up by the learned Single Judge on 23rd December, 2009, learned counsel for the appellant on instruction withdraw the writ petition to enable the appellant to move departmentally. The writ petition was accordingly dismissed as withdrawn.

7. Thereafter, the appellant preferred an appeal to the Principal Secretary and Commissioner Food, Food and Supplies Department, Government of West Bengal whereupon the Principal Secretary and Commissioner Food passed an order dated 8th March, 2010 setting aside the order of the District Magistrate, Purulia with a direction to restore supply of 192 K.L. Kerosene Oil per month in favour of the appellant. It was also ordered to reduce the quota of M/s Lachmi Narayan Bhomroj (respondent) to 70 K.L. Kerosene Oil per month.

8. The aforesaid order dated 8th March, 2010 passed by the Principal Secretary was challenged by the respondents M/s Lachmi Narayan Bhomroj and others in

Writ Petition No. 365/2010. They questioned the maintainability of the appeal and jurisdiction of the Principal Secretary to entertain such appeal. Learned single Judge by order dated 26th March, 2010 held that the Principal Secretary was not competent to hear the appeal and to set aside the order passed by the District Magistrate. Hence, the writ petition was allowed and the order passed by Principal Secretary was set aside. The aforesaid order has been affirmed by the Division Bench.

9. Learned counsel for the appellant submitted that the Division Bench committed serious error of law by holding that the State Government is not an appellate authority with respect to the order passed under Paragraph 11 of the Control Order. The appeal against the order passed by the District Magistrate lies to the State Government and that the High Court also failed to notice that in the present case the amended provision of the Paragraph 10 of the Control Order is applicable which came into effect prior to the order passed by the District Magistrate on 16th December, 2009.

10. On the other hand, learned counsel for the respondent contended that the Principal Secretary and Commissioner of Food and Supplies Department had no jurisdiction to hear an appeal over an order passed by the District Magistrate.

11. In the said circumstances, the questions that arise for our consideration are:

(i) Whether the impugned order was passed by the State Government?

(ii) If not so, whether the Principal Secretary and Commissioner of the Food and Supply Department has jurisdiction to entertain the appeal against the order passed by District Magistrate.

12. Under paragraph 8 of the Control Order, the Director or the District Magistrate, as the case may be, are vested with the power to refuse to grant or renew a licence following the procedure as mentioned therein. It reads as follows:

“8. Refusal to grant or renew license:- The Director, or the District Magistrate, having jurisdiction, may, after giving the agent or the dealer or hawker concerned an opportunity of stating his case in writing and for reasons to be recorded in writing, refuse to grant or renew a license under this Order.”

13. On the other hand, Paragraph 9 of the Control Order deals with the power of Director/District Magistrate for cancellation or suspension of license in case of any malpractice or contravention of any provision of this Order. Paragraph 9 reads as follows:

“9. Cancellation or suspension of license:- If it appears to the Director or the District Magistrate having jurisdiction that an agent or a dealer has indulged in any malpractice or contravened any provision of this order or any condition of the license or any direction given under paragraph 12 of the order, he may forthwith temporarily suspend the license;

Provided that the agent or the dealer whose license has been so suspended shall be given an opportunity of being heard before cancellation of the license or revocation of the order of suspension of the license finally by an order in writing to be made within 30 days from the date of suspension of the license. The order shall be passed ex parte if the dealer whose license has been so suspended fails to appear at the hearing.”

14. Any person aggrieved by the Order passed under Paragraph 8 or Paragraph 9 of the Control Order may within 30 days prefer an appeal under Paragraph 10, which reads as follows:

“10. Appeal – Any person aggrieved by an order passed under paragraph or paragraph 9 of this order may within 30 days from the date of the order, prefer an appeal –

a) in Calcutta.

i) where the order is passed by the Director of Consumer Goods, Department of Food and Supplies, to the State Government.

ii) where the order is passed by any other authorised by the State Government under Clause (d) of paragraph 3, to the Director of Consumer Goods, Department of Food and Supplies, and

b) elsewhere;

i) where the order is passed by the District Magistrate or the Deputy Commissioner of a District, to the State Government

ii) Where the order is passed by any other officer authorised by the District Magistrate of the Deputy Commissioner of a district under Clause (e) of paragraph 3, to the District Magistrate or the deputy commissioner, as the case may be, of the District”.

15. From the aforesaid provision, it is evident that no appeal lies to the Principal Secretary or the Commission of Food and Supply Department.

16. Paragraph 11 relates to issue of delivery order or permit by the Director or the District Magistrate, which reads as under:

“11. Issue of delivery order or permit –

(1) The Director or the District Magistrate having jurisdiction may issue a delivery order or permit requiring an agent within his jurisdiction to supply kerosene to –

a) a dealer, or

b) other person or establishment requiring kerosene for his or its own consumption, in any particular area, if in the opinion of the Director or the District Magistrate, as the case may be, this is considered necessary, or

c) an agent.

2) No person other than oil distributing company, an agent or a dealer shall transport kerosene or store kerosene or shall have in his possession kerosene exceeding ten liters at a time except under and in accordance with a permit issued by the Director or the District Magistrate having jurisdiction.”

17. The impugned order passed by the District Magistrate, Purulia on 6th October, 2009 cannot be termed as an order passed under Paragraph 8 or Paragraph 9 of the Control Order. In such a situation, no appeal is maintainable under Paragraph 10 before the Principal Secretary or the Commissioner, Food and Supply Department, Government of West Bengal.

18. In the present case, the District Magistrate, Purulia passed an order dated 6.10.2009 whereby the quantum of Kerosene Oil allotted per month to respondent got enhanced. By the same order quantum of Kerosene Oil allotted to the appellant got reduced. Even if it is assumed that the order of the District Magistrate was under Paragraph 11 of the Control Order, such an order is not appealable under Paragraph 10 or before the Principal Secretary and Commissioner of Food and Supply Department, Govt. of West Bengal.

19. The State has indeed the inherent power to alter or to set aside any order passed by the District Magistrate but it should follow the procedure as prescribed by the law, such an order should be passed by the authority empowered to do so on behalf of the State in the name of Governor of the State.

20. From the impugned order passed by the Principal Secretary and Commissioner, Food and Supply Department, it is apparent that the said order has been passed in the capacity of his designated post and not on behalf of the State.

21. Learned counsel for the appellant submitted that the writ petition was withdrawn by the appellant to move before the competent authority. But that does not mean that while withdrawing such case, the Court or any individual can confer jurisdiction upon any authority who otherwise is not so empowered under the Statute.

22. We, therefore, do not find any infirmity or illegality in the impugned order passed by the District Magistrate as affirmed by the Single Judge and the Division Bench. In absence of any merit the appeal is dismissed. The parties shall bear their respective costs.