

RAJASTHAN HIGH COURT

Kerosin Tel Khudra Vikreta Sangh

Vs.

State of Rajasthan

C. W. P. No. 3152, 3675, 3396, 3468, 3391, 3292, 3293, 3710, 3709, 3708 and 3217
of 2002

(Sunil Kumar Garg, J.)

16.10.2002

ORDER

Sunil Kumar Garg, J.

1. All the above-mentioned writ petitions, which are ten in number, are being decided by this common order as in all of them, identical questions of law and facts are involved.

S. B. Civil Writ Petition No. 3152/2002

2. This writ petition under Article 226 of the Constitution of India has been filed by the petitioner-Union on 21-8-2002 against the respondents with the prayer that by an appropriate writ, order or direction, the impugned order Annex. 5 dated 12-8-2002 passed by the respondent No. 3 District Collector (Supplies), Bikaner by which the wholesale dealers were asked not to distribute blue kerosene to the retailers, be quashed and set aside.

3. The case of the petitioner as put forward in this writ petition is as follows :-

It may be stated here that some of the writ petitions are filed by the individuals and this writ petition is filed by the petitioner-Union of Kerosene Oil Retail Sellers, which was registered on 14th Jan. 1991 under the Indian Trade Unions Act, 1926 bearing Registration No. D. R. T. U. /BKN/1/91.

The case of the petitioner-Union is that licenses were issued to the members of the

petitioner-Union under the provisions of the Rajasthan Trade Articles (Licensing and Control) Order, 1980 (hereinafter referred to as "the Order of 1980"), which came into force with effect from 27th August, 1980 in capacity as retailers and licenses were also issued to wholesaler under the Order of 1980. Copies of the licenses are marked as Annex. 1 and 2. The further case of the petitioner-Union is that after getting the licenses, the members of the petitioner-Union have been selling kerosene oil in capacity as retail sellers through the wholesaler. The further case of the petitioner-Union is that in the year 1991, the respondents put a condition that the retail sellers shall make their identity cards and then they are entitled to take delivery of kerosene oil through wholesaler and the distribution of the kerosene oil shall be maintained in the register, which will be verified by the concerning officer of the Food and Supplies Department. Accordingly, all the members of the petitioner-Union made their identity cards and the registers have been verified by the concerning officer. The further case of the petitioner-Union is that the kerosene oil is also being delivered by the license holders under the proviso to the Rajasthan Foodgrains and other Essential Articles (Regulation of Distribution) Order, 1976 (hereinafter referred to as "the Order of 1976") but through their fair price shops. Thus, both types of license holders under the proviso to Order of 1976 as well as under the proviso to Order of 1980 have been allotting/distributing the kerosene oil without any interruption. The further case of the petitioner-Union is that in the year 1994, to remove the complaints in respect of black-marketing, reducing the quality and mixing the kerosene oil into diesel, the blue kerosene oil was delivered to both the types of license holders. Therefore, to make uniformity in distributing the blue kerosene oil, the respondent No.1 Food and Supply Department of Government of Rajasthan, Jaipur issued directions vide letter dated 3rd Oct. 1994, a copy of which is marked as Annex. 3. The gist of the letter Annex. 3 is as follows :-

- (i) That in future, the Kerosene oil would be distributed through fair price shops as far as possible.
- (ii) That retailers could also sell kerosene oil to consumers on the basis of ration card.
- (iii) That persons who got the licenses under the Order of 1980 in capacity as retailers, were put under supervision so that black-marketing can be controlled.

The further case of the petitioner-Union is that licenses were given to retail sellers under the proviso to Order of 1980 and they were authorized to sell only the imported

white kerosene oil on free sale, but since the members of the petitioner-Union were already having licenses to sell rationing kerosene oil, therefore, licenses, which were issued in 1999 for selling imported white kerosene oil, were not made applicable to the case of the members of the petitioner-Union. (In the license (Annex. 1) issued to retailer Ramjeet, the word mentioned is 'kerosene oil' while in the license (Annex. 4) issued to Jugal Kishore, the word mentioned is "imported kerosene" and thus, there is a distinction between Annex.1 and Annex. 4 and in Annex. 4, the word "retailer of free sell kerosene" is also mentioned). The further case of the petitioner-Union is that all of a sudden, the respondent No. 3 District Collector (Supplies), Bikaner issued an order dated 12-8-2002 (Annex. 5) by which the wholesalers were asked not to distribute blue kerosene oil to the retailers (present petitioners). The further case of the petitioner-Union is that after issuance of the aforesaid order Annex. 5, as per instructions of the State Government, the District Supply Officer, *Hanumangarh* as well as other Districts have also issued the order vide letter dated 13th August, 2002, by which the wholesalers holding the licenses under the proviso to Order of 1980 were directed to obtain their licenses under the proviso to Order of 1976. In this respect, a copy of the letter dated 13th August, 2002 issued by the District Supply Officer, *Hanumangarh* is marked as Annex. 6. In this writ petition, the order Annex. 5 dated 12-8-2002 has been challenged by the petitioner-Union on various grounds and the main grounds are as follows:-

- (i) that no notice or opportunity of hearing was given to the members of the petitioner-Union before passing the impugned order Annex. 5 dated 12-8-2002 and thus, the said order Annex. 5 is liable to be set aside on that ground alone as it is hit by the principles of natural justice.
- (ii) That there is a clear-cut hostile discrimination between the similarly situated license holders under the same proviso to Order of 1980 as the wholesalers have been allowed to sell blue kerosene oil by way of allowing them to obtain the license under the proviso to Order of 1976, whereas only the retail sellers have been disallowed and the allotment/distribution of blue kerosene oil to the retail sellers have been cancelled or disallowed which is quite illegal, unjustified, unconstitutional and arbitrary action on the part of the respondents so as to be violative of Article 14 of the Constitution of India. Thus, the impugned order Annex. 5 is liable to be set aside on that ground also.
- (iii) That when licenses were issued to sell kerosene oil, thereafter stopping of supply of blue kerosene oil to the members of the petitioner-Union violates the

terms of the licenses as in the licenses issued to them, no distinction was made between blue and white kerosene.

Hence, this writ petition with the prayer as stated above.

A reply to the writ petition was filed by the respondents and in that reply, it was averred by the respondents that for distribution of kerosene, there are two systems prevailing in the State, for which the Order of 1976 and Order of 1980 were issued. According to the respondents, under clause (3) of the Order of 1976 Authorization may be issued to wholesalers/fair price shop keepers and under Order of 1980, licenses may be issued to dealers and thus, the distribution of kerosene has been provided to Fair Price Shop-keepers and Rajasthan Trade Article Licensee (RTAL). The further case of the respondents is that in both these Orders of 1976 and 1980, the words "Kerosene Oil" has been included and authorization and license have been given for the "kerosene oil" only and furthermore, authorization given under the Order of 1976 authorizes the fair price shop-keepers to sell food grains and other essential articles supplied by the Government from time to time, directly to those consumers whose ration cards are registered at their shops in Unit Register but that condition is absent in the Order of 1980 in RTAL dealers. Therefore, there is a vast difference between the Fair Price Shop-keepers and Rajasthan Trade Article Licensee. The further case of the respondents is that in the year 1992, a policy- decision was taken by the State Government that RTAL dealer, who is holding license in kerosene oil shall not be entitled to sell the same and kerosene will be sold through the public distribution system and fair price shops and that decision was challenged by the licensee, namely, Radha Mohan in S. B. Civil Writ Petition No. 6340/92, which was dismissed on 19-4-1994 and the policy-decision was upheld by this Court in *State of Rajasthan v. Pink City (Trade Articles) Khudra Vikreta Sangh, Jaipur*,¹ therefore, at present the licensees under the Order of 1980 are not distributing kerosene in cities like Jaipur, Baran, Dausa, Tonk, Bharatpur, Jhunjhunu, Karoli, Dholpur, Ajmer, Alwar. The further case of the respondents is that thereafter, the Central Government has further issued the Order under the liberalisation scheme in exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955 (hereinafter referred to as "the Act of 1955") namely, Kerosene (Restriction on Use and Fixation of Ceiling Price) Order, 1993 (hereinafter referred to as "the Order of 1993") in which parallel marketing system was introduced for distribution of kerosene rather than to distribute through Government based marketing through fair price shop-keepers and in Clause (8) of the Order of 1993, it is provided that the kerosene supplied through public

distribution system shall be made distinguishable from the kerosene to be imported, sold or distributed under parallel marketing system and, therefore, the State Government had changed the distribution of white kerosene to blue dyed kerosene to maintain distinction among public distribution and parallel marketing system. Therefore, since 1994 the blue dyed kerosene was being distributed among public through public distribution. The copies of the Order of 1993 and letter dated 7-6-1994 are marked as Annexs. R/1 and R/2 respectively. Thus, it was submitted by the respondents that for promoting the parallel marketing system, RTAL dealers were estopped from selling blue Kerosene and that was done as per the policy-decision of the Government. Hence, the members of the petitioner-Union are not entitled to any relief in this writ petition and the same be dismissed.

4-5. I have heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents and gone through the materials available on record.

6. It is an admitted position of the case that the members of the petitioner Union were given licenses for selling the kerosene oil under the provisions of Order of 1980 and in their licenses, the word "kerosene" was there.

7. It is also an admitted position of the case that through Annex. 3 dated 3- 10-1994, the Government took decision that as far as possible distribution of kerosene oil should be through fair price shops, but by the same order, the retailers were also allowed to sell kerosene oil, but a vigilance was put on their sale, to check black-marketing.

8. There is also no dispute on the point that later on in 1999, when licenses were issued under the Order of 1980 to retailers, there was a specific mention of the fact that they would sale only imported free sell kerosene oil (White) and this brand was also mentioned in their licenses, though such brand is missing in the licenses issued to the members of the petitioner-Union.

9. There is also no dispute on the point that through impugned order Annex. 5, the members of the petitioner-Union were not given blue kerosene oil by the wholesalers. In other words, the wholesalers were asked not to distribute blue kerosene oil to the retailers.

10. There is also no dispute on the point that the word "kerosene" means a middle distillate mixture of hydrocarbons meeting BIS specification No. IS- 1459 of 1974 with important characteristics of flash point at a minimum of 35°C and smoke point at a minimum of 18 mm, as defined in the Notification Annex. R/1.

11. There is also no dispute on the point that later on two brands of kerosene oil were made one is known as "blue" and the other is known as "white".

12. There is also no dispute on the point that there is a large difference of rate between the blue kerosene and white kerosene and the blue kerosene is sold at a cheaper rate than the white kerosene.

13. There is also no dispute on the point that through Annex. R/1, the word "kerosene" has been defined, as stated above, but in that definition, no distinction of blue and white kerosene has been made in clear terms.

14. There is also no dispute on the point that through Annex. R/1, parallel marketing system was introduced for selling the kerosene oil and it was further observed in Annex. R/1 that kerosene supplied through public distribution system shall be made distinguishable from the kerosene to be imported, sold or distributed under parallel marketing system by use of suitable measures to be adopted by the Government Oil Companies as and when necessary.

15. There is also no dispute on the point that through Annex. R/2 dated 23-5- 1994, blue dyed kerosene oil was introduced.

16. The Government of India, Ministry of Consumer Affairs, Food and Public Distribution passed an order on 31-8-2001 for maintaining supplies and securing availability and distribution of essential commodities under the Public Distribution System, namely, Public Distribution System (Control) Order, 2001 (hereinafter referred to as "the Order of 2001"), which was circulated through Annex. R/6 in which "fair price shop" has been defined, and in the phrase "public distribution system" which means the system for distribution of essential commodities to the ration card holders through the fair price shops, the word "kerosene" was there, but in that Order of 2001, kerosene was not divided into two parts.

17. There is also no dispute on the point that still the licenses of the members of the petitioner-Union have not been cancelled so far.

18. There is also no dispute on the point that impugned order Annex. 5 dated 12-8-2002 was passed by the respondent No. 3 District Collector (Supplies), Bikaner without giving prior notice or opportunity of hearing to the members of the petitioner-Union.

19. The question for consideration in the above facts and circumstances is whether the impugned order Annex. 5 dated 12-8-2002 passed by the respondent No. 3 can be justified or not or whether the same is liable to be set aside on the grounds mentioned by the petitioner-Union or not.

20. As already stated above, in the licenses, which were issued to the members of the petitioner-Union, the word "kerosene" is found, though in the licenses, which were issued to the other retailers in the year 1999, a distinction has been drawn between two types of kerosene, namely, blue kerosene and white imported kerosene and in the licenses issued to retailers in the year 1999, there is a clear mention that the licenses are being issued to sell only white imported kerosene oil and this thing is missing in the licenses of the members of the petitioner Union.

21. The definition of "Kerosene" is wide enough to include both types of kerosene blue as well as white.

22. In my considered opinion, when the licenses were given to the retailers to sell kerosene oil and later on two types of kerosene were made available in the market and it was ordered further that blue kerosene would only be sold through fair price shops and not by the dealers but at that time also, the licenses of the members of the petitioner-Union were not cancelled and without issuing any notice or opportunity of being heard to them, through impugned order Annex. 5, the wholesalers were asked not to distribute the blue kerosene oil to the retailers (members of the petitioner-Union) and they were only supplied white kerosene and there is a large difference of price in between the blue kerosene and white kerosene and blue kerosene is being sold at a cheaper price than of white kerosene, therefore, in these circumstances, impugned order Annex. 5 cannot be sustained so far as the members of the petitioner-Union and other petitioners are concerned, as principles of natural justice have been violated by

the respondents in this case.

23. It may be stated here that writs of *certiorari* or prohibition could lie in the case of contravention of principles of natural justice.

24. The principles of natural justice mean that the concerned authority cannot make any decision adverse to any party without giving him an effective opportunity of meeting any relevant allegation against him, or before an order affecting him is made. The principles require:-

(a) That every person whose civil right is affected must have a reasonable notice of the case he has to meet or must be furnished with the information upon which the action is based.

(b) That he must have a reasonable opportunity of being heard in his defense, or to meet the case against him. This requirement has two elements (i) opportunity to be heard must be given; (ii) such opportunities must be reasonable. What is 'reasonable' will depend upon the circumstances of each case.

25. In the present case, since before passing the impugned order Annex. 5, no notice or opportunity of hearing was given to the members of the petitioner- Union and by issuing order Annex. 5, their rights have been adversely affected, therefore, in these circumstances, the impugned order Annex. 5 dated 12-8-2002 passed by the respondent No. 3 cannot be sustained as it is hit by the principles of natural justice.

26. The learned counsel for the respondents has submitted that principles of natural justice are not applicable in the present case because it is a matter of policy-decision and for that, he has placed reliance on various decisions and the references of which are being made here.

27. No doubt in *Bhandara District Central Co-operative Bank Ltd. v. State of Maharashtra*,² the Hon'ble Supreme Court held that Court cannot be called upon to embark on an enquiry into public policy or investigate into questions of political wisdom or even to pronounce upon motives of Legislature in enacting law which is otherwise within its legislative competence. But, here in the present case, the position is otherwise as the kerosene itself was divided into two components and though previously, the members of the petitioner-Union were allowed to sell blue kerosene

oil, but later on its supply was stopped to them and, therefore, this authority would not be helpful to the respondents. Had there been a case of substituting new item or deleting any item from the schedule of distribution system, the position would have been different.

28. So far as the decision of this Court in *State of Rajasthan v. Pink City (Trade Articles) Khudra Vikreta Sangh, Jaipur* ³ is concerned, no doubt this Court has observed that the State has the delegated power of the Central Government to regulate the supply of kerosene used to be sold by the licensed dealers and the Central Government having realized that the sale through fair price shop was useful and beneficial for public, changed the method and in these circumstances, no licensed dealer could insist that he had a right to receive kerosene from the Government and to sell it to the public, but, these observations no doubt are of very important nature, but when they are made applicable to the facts of the present case, they would not be useful to the respondents as in this case, sale of kerosene oil is divided into two parts. The Government could stop the supply of kerosene oil to the members of the petitioner-Union, but after giving an opportunity of hearing to them, as non-supply of the blue kerosene to them has adversely affected their rights because they got the licenses of kerosene and not of imported kerosene (white). Hence, that authority would not be helpful to the respondents.

29. Thus, the authorities in *Mohd. Fida Karim v. State of Bihar*, ⁴ *Sasa Musa Sugar Works etc. etc. v. State of Bihar*, ⁵ *Sarkari Sasta Anaj Vikreta Sangh v. State of Madhya Pradesh* ⁶ and *District Collector v. B. Suresh* ⁷ stand distinguished in the same manner as the authority of this Court in the case of *Pink City (Trade Articles) Khudra Vikreta Sangh, Jaipur* (supra) was distinguished and thus, these authorities would not be helpful to the respondents.

30. So far as the decision of the Hon'ble Supreme Court in *BALCO Employees Union (Regd.) v. Union of India*, ⁸ is concerned, it may be stated here that there is no dispute on the point that policy-decision of the Government should not be interfered with by this Court, but as stated above, the present case is of unique nature and since before passing the impugned order Annex. 5, no notice or opportunity of hearing was given to the members of the petitioner-Union, therefore, interference is being made by this Court and thus, this authority would also not be helpful to the respondents.

31. For the reasons stated above, the impugned order Annex. 5 dated 12-8-2002 passed by the respondent No. 3 cannot be sustained and liable to be set aside as it is hit by the principles of natural justice.

32. Apart from this, it appears that there is a hostile discrimination between the similarly situated license holders in the manner that though they are possessing licenses for kerosene and there is no bifurcation of kerosene into two components i.e. blue and white kerosene and previously they were allowed to sell both white as well as blue kerosene, but later on, some of them are allowed to sell blue kerosene and some of them are allowed to sell white kerosene, but the members of the petitioner-Union were allowed to sell only white kerosene and supply of blue kerosene was stopped to them through impugned order Annex. 5 while through licenses issued to them, they were entitled to sell kerosene with no distinction and by doing so, the respondents have made discrimination against the members of the petitioner-Union and other petitioners and thus, impugned order Annex. 5 cannot be sustained and this writ petition deserves to be allowed. Accordingly, this writ petition filed by the petitioner Union is allowed and the impugned order Annex. 5 dated 12-8-2002 passed by the respondent No.3 District Collector (Supplies), Bikaner is set aside.

However, it is made clear that the respondents are free to pass any fresh order even affecting the licenses already issued to the members of the petitioner Union and other petitioners, after giving an opportunity of hearing to the petitioners concerned, keeping in mind the policy decision of the Government for distribution of blue and white kerosene oil. No order as to costs. Writ petitions mentioned at serial Nos.2 to 10 of this order.

33. Since the writ petitions mentioned at serial Nos.2 to 10 of this order raise the same controversy which has been decided above in S. B. Civil Writ Petition No. 3152/2002, therefore, for the reasons given in S. B. Civil Writ Petition No. 3152/2002, the writ petitions mentioned at serial Nos.2 to 10 of this order also deserve to be allowed. Accordingly, the above mentioned writ petitions at serial Nos. 2 to 10 of this order are also allowed in the light and terms of the order passed in above S. B. Civil Writ petition No. 3152/2002.

Order accordingly.

Cases Referred.

1. D. B. Civil Special Appeal (Writ) No. 557/92
2. AIR 1993 SC 59
3. (1993) 2 WLC (Raj) 485
4. AIR 1992 SC 1191
5. AIR 1997 SC 188
6. (1981) 4 SCC 471
7. (1999) 5 SCC 612
8. 2001 AIR SCW 5135