

**N.Narayanan Vs. State of Kerala**

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**Court :** Kerala

**Decided On :** Jan-08-2013

**Judge :** Honourable Mr.Justice a.M.Shaffique

**Appellant :** N.Narayanan

**Respondent :** State of Kerala

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE TUESDAY, THE 8TH DAY OF JANUARY 2013 18TH POUSHA 193 WP(C).No. 16445 of 2011 (E)

----- PETITIONER(S): ----- N. NARAYANAN, ARD NO. 124, NELLIKODAN HOUSE,POOKOTTUMAKADAVU P.O. NILAMBOOR TALUK,MALAPPURAM DISTRICT. BY ADVS.SRI.K.JAJU BABU SMT.M.U.VIJAYALAKSHMI SMT.DHANYA CHANDRAN SRI.M.V.JOSEPH (ALAPPUZHA) RESPONDENT(S): ----- 1. STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT,FOOD AND CIVIL SUPPLIES DEPARTMENT,GOVERNMENT SECRETARIAT THIRUVANANTHAPURAM-695001.

2. THE DIRECTOR OF CIVIL SUPPLIES THIRUVANANTHAPURAM-695001.

3. THE TALUK SUPPLY OFFICER, NILAMBOOR-679329. BY GOVERNMENT PLEADER SRI.NOUSHAD THOTTATHIL THIS WRIT PETITION (CIVIL) HAVING

BEEN FINALLY HEARD ON 08-01-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: tss W.P.(C) NO.16445/2011 APPENDIX PETITIONER'S EXHIBITS:- P1:- COPY OF THE ORDER NO.(C.S.) A4/6290/09 DTD 18.3.09 DTD. 18.3.09 ISSUED BY THE 2ND RESPONDENT. P2:- COPY OF THE ORDER NO.(C.S)A4-6290/09 DTD. 31.12.09 ISSUED BY THE 2ND RESPONDENT. P3:- COPY OF THE REVISION PETITION DTD. 30.9.10 FILED BY THE PETITIONER. P4:- COPY OF THE ORDER NO.118/2011/C.S.D. DTD. 21.3.11 ISSUED BY THE 1ST RESPONDENT. P5:- COPY OF THE ORDER NO.C.S.4/782/09 DTD. 18.5.11 ISSUED BY THE 3RD RESPONDENT. RESPONDENT'S EXHIBITS:- NIL //TRUE COPY// P.A. TO JUDGE tss A.M. SHAFFIQUE, J ----- W.P. (C) NO. 16445 OF 2011.----- Dated this the 08th day of January, 2013 JUDGMENT Petitioner challenges Ext. P1, P2, P4 and P5 issued by the respondents. The petitioner was a licensee of Authorised Retail Depot No. 124 in Nilambur Taluk. An inspection was conducted in his licensed premises on 19.02.2009. His license was suspended by Ext. P1, on the ground that there was some irregularities in the sale of Kerosene. His license was cancelled as per Ext.P2. Though a revision was filed, the same happened to be dismissed as per Ext. P4. Action was also taken by Ext. P5 to recover an amount of Rs. 63,446/- from the petitioner.

2. The main contention raised by the learned Counsel for the petitioner is that when inspection was conducted they did not find any stock variation. In the absence of timely intimation from the Department regarding the change over of Non Electrical cards to Electrical cards to the petitioner, the cards were treated as Non Electrical cards at the time of distribution. Therefore 5 liters each were distributed to Non Electrical card holders which was a bonafide error and not a deliberate omission. It is the contention that it was only a mistake on the part of the petitioner W.P. (C) NO. 16445 OF 2011.2 without notifying the conversion of Non Electrical cards to Electrical cards. The counsel for the petitioner also submits that there was no such incident on earlier occasions and therefore such a drastic step of cancellation of agency was unnecessary. The learned counsel also referred to para no. 7 of the revision petition to contend that the petitioner had admitted the mistake and was ready and willing to pay the penalty imposed but the license

should be reinstated as the livelihood will be effected and the petitioner has no other source of income.

3. Counter affidavit is filed by the 2nd respondent inter alia contenting that the license was cancelled and recovery of the value of the misused or misappropriated ration articles have been taken as per Clause 12(1)(b) of the Kerala Kerosene Control Order 1968 and accordingly a penalty had been imposed to recover an amount of Rs. 63,446.04. It is further submitted that his license was suspended during the pendency or in contemplation of proceedings for cancellation of his license since it was found that the petitioner was involved in large scale misappropriation of rationed articles. It is also stated that the reply of the petitioner was considered in accordance with the W.P. (C) NO. 16445 OF 201.3 procedure prescribed and therefore there is no reason to challenge the impugned orders. It is further stated that the petitioner has actually issued 2 liters of kerosene to Non Electrical card holders and recorded as 2 liters in the concerned ration cards but recorded as 5 liters in the sales register, ledger and other accounts of the ARD and thus misappropriated 3546 liters of kerosene.

4. Heard the learned counsel for the petitioner and learned Government Pleader.

5. It is not a dispute that the license for operating Retail Dealership is given on certain conditions and the petitioner being a licensee is liable to comply with such conditions. Kerosene is a subsidised product and supplied to cardholders depending upon their nature of requirement as specified by the Taluk Supply Officer. Therefore, it is all the more necessary for licensees to be very careful in the manner in which the kerosene is supplied and preparation of the documents. Even a mistake in maintaining records would amount to violation of license conditions. In this case though the petitioner admits the fact that it was a mistake on his part, the fact remains that documents are W.P. (C) NO. 16445 OF 201.4 not properly maintained. Even if going by the explanation and accepting the contentions of the petitioner that he had not misappropriated the kerosene, still if the documents are not properly maintained and the authority has found that there is difference in the entries made in the Non Electrical card holders ration cards and the entries made in the sales register, ledger and other records, that itself will give

rise to cause of action for cancellation of his license. Still further it could be seen that the difference in quantum of kerosene on account of the said entries is 3546 liters and going by Ext. P2 it could be seen that it was during different periods. It is not a solitary mistake. 13 instances are pointed out by the Department after stock verification. In the said circumstances, I do not think that this court will be justified in interfering with the impugned orders. Accordingly the writ petition is dismissed.  
sd/- A.M. SHAFFIQUE JUDGE DCS

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