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**Court : Rajasthan**

**Decided On : Mar-10-1993**

**Reported in : AIR1994Raj164; 1993(2)WLC485**

**Judge : K.C. Agrawal, C.J. and; V.K. Singhal, J.**

**Acts : [Essential Commodities Act, 1955](#) - Sections 3; Rajasthan Trade Articles (Licensing and Control) Order, 1980; Rajasthan Foodgrains and other Essential Articles (Regulation of Distribution) Order, 1976; Rajasthan Kerosene Oil Dealers Licensing Order, 1971; [Constitution of India](#) - Articles 19(1) and 21**

**Appeal No. : D.B. Special Appeal (Writ) No. 557 of 1992**

**Appellant : State of Rajasthan**

**Respondent : Pink City (Trade Articles) Khudra Vikreta Sangh, Jaipur**

**Advocate for Def. : Suresh Goyal, Adv.**

**Advocate for Pet/Ap. : A.K. Bhandari, Addl. Adv. General**

**Disposition : Appeal allowed**

**Judgement :**

## **Singhal, J.**

1. This Special Appeal has been filed against the judgment of the learned single Judge dated 6th August, 1992 wherein, the writ petition submitted under Article 226 of the [Constitution of India](#) was allowed and it was declared that the incharge of the various depot from where the kerosene was being sold to the members of the petitioner Sangh are not bound to obey the verbal instructions/ directions of the District Supply Officer and that the members of the petitioner Sangh cannot be deprived from purchasing kerosene oil from the various godowns and to deal in them as retailers under the licenses which are still valid.

2. The submission of the learned Additional Advocate General is two fold namely; the grant of license does not confer any right on the respondents to procure the kerosene oil and the appellants are not bound to sale the same to the respondents and that it is a policy matter in which the Court should not interfere and since no mala fide has been alleged or proved the directions given by the learned single Judge are not in accordance with law.

3. Reliance has been placed on the decision of Mohd. Fida Karim v. State of Bihar, AIR 1992 SC 1191 wherein, it was held that 'It is also well settled that the right of vend of excisable articles is exclusively and absolutely owned by the State Government. The Government realised its mistake and thus adopted a new policy to augment its revenue and to avoid monopolistic tendency. There is nothing wrong in taking such view by the State Government and to change its policy considering the same to be in public interest. Moreover, the said policy decision by the Government cannot also be challenged on ground of promissory estoppel or violation of Article 14. There was neither any promise nor there is any justification to hold that the licences altered their position on the basis of promise.'

4. The learned counsel for the appellant has further submitted that it was on account of number of complaints of hoarding, black marketing and other irregularities which were received in respect of the licences that a decision to distribute the kerosene oil through fair price shops was taken. It is submitted that in respect of the licensees whose licenses are still in force no right has accrued to them that the sale of kerosene oil should be effected to them. Neither under the

Rajasthan Trade Articles (Licensing and Control) Order, 1980 there is an obligation on the appellant to supply the kerosene under the licenses to the respondents nor the Rajasthan Foodgrains (Essential Articles) Order, 1976 has contemplated such an obligation. The grant of license is for regulating the purchase, sale and storage of the trade articles and there is no right of the respondents that the sale of kerosene oil should be made to them. It has also been submitted that from the various documents which have been submitted before the learned single Judge it is evident that it was the matter of policy that a decision was taken for distribution of the kerosene oil through the fair price shops. It has further been stated that neither there was any allegation of mala fide nor it is so proved and, therefore, the action of the appellants in effecting the sale of kerosene oil through the fair price shops is in public interest and to ensure regular supply with fair and equitable distribution of the essential commodities. It has been stated that the interpretation which has been taken of the various documents submitted in reply to the stay petition is not correct. According to the letter dated 21-2-1983 it was directed by the Additional Commissioner that the distribution of kerosene oil should be done through the medium of fair price shops. In the letter dated 10th Sept. 1987 it was clearly mentioned that in future no licence should be granted to any private dealer and the distribution should be only through the fair price shops unless such fair price shops' dealer is not ready or his license has been suspended. In the letter dated 15th February, 1988 it was again reiterated that the distribution of kerosene oil should be done only through the fair price shops and the private licensee could be authorised where the fair price shops dealer is not interested and the prior permission of the Collector which was envisaged earlier was dispensed with. In the letter dated 7th April, 1984 it was directed that the licences of the private dealers should not be renewed. On the basis of these letters it has been submitted that the intention for distribution of the kerosene oil through the fair price shops was made clear and this being a policy decision the interpretation that the learned single Judge has placed is not in accordance with law. The copy of the order-sheet dated 8th June, 1980 has also been placed on record in which the Collector of Jaipur has mentioned that the Govt. of India and the State Government with a view to control the prices and stop black marketing has stressed for distribution of kerosene through the fair price

shops and it should be ensured that the kerosene oil should be distributed through these fair price shops. In the first phase this procedure was made applicable in Jaipur City and it was contemplated in the second phase it will be applicable for the whole district. The distribution of kerosene oil through rickshaw pullers was allowed in public interest.

5. The non-supply of kerosene oil by the Indian Oil Corporation and Bharat Petroleum Corporation was in pursuance of the policy decision taken by the Collector and there could not have been any direction by this Court in this regard.

6. The submission of the learned counsel for the respondents is that there is an obligation on the appellant to supply kerosene oil since the licenses are still in force and that refusal to supply the kerosene oil is violative of Article 19.

7. Reliance has been placed on the decision of Hon'ble Supreme Court in the case of Mahabir Auto Stores v. Indian Oil Corporation 1990 (3) SCC 752 : (AIR 1990 SC 1031) wherein , it was held by the Apex Court that 'Where instrumentality of State carrying on monopoly or semi-business continued a transaction of supply of large quantity of material for a fairly long period to a private party as its distributor even without entering into a formal contract, held, abrupt discontinuance of the supply on ground of change in government policy, without informing and taking into confidence the affected party, was bad'.

8. The relationship of the present respondents in the oil corporation companies are not to be adjudged in this appeal inasmuch as neither the said corporations are party before us nor any document alleging or proving the relationship of the respondent with the Corporations have been placed on record. A specific question was asked from the learned counsel for the respondents as to in which provision or agreement or document there is a right of the respondents to procure the kerosene oil from the Corporation and it was submitted that it is by virtue of the licenses granted to them. We are unable to agree with the contention of the learned counsel for the respondents inasmuch as the license only give him right to carry on the business in accordance with the terms of the license without casting any obligation to sale the kerosene oil on the part of the appellant or the Corporation. There is no such clause in the license which casts an obligation to

sale the kerosene to the private licensees. Beside this it is a case of change of policy of the Government and that too in public interest. It may be correct that action for contravention of the terms of the license may not have been taken but in democracy the state appellant have to act in a manner which is in the larger public interest. The action is not arbitrary or unreasonable and is the result of the policy decision. The decision of Supreme Court in *Sudan Singh v. N.D.M.C.* Judgments Today 1992 (2) 190 : (AIR 1992 SC 1153), relied by the learned counsel for the respondents has no application to the facts of the present case.

9. The submission of the learned counsel for the respondents that their right to carry on trade is infringed has also no substance as it amount to a reasonable restriction in public interest wherein to achieve fair and equitable distribution to the masses at fixed price the kerosene has been directed to be supplied through the fair price shops and rickshaw pullers. There is difference between the right to procurement of article and the right to carry on the trade in any particular article. So far as the right for procurment is concerned, it must be under some agreement, contract, regulation or statute but no such document have been shown to us. The license is only for regulating the commodity. In the license there is no such provision or condition by which the respondents have acquired any right to purchase the kerosene oil from the Oil Corporations and more so these corporations were not made as party in the writ proceedings, therefore, no directions could have been given to them.

10. Next submission made by the respondent's counsel was about the infringement of Article 21 of the [Constitution of India](#) by change over of policy of sale of kerosene by the fair price dealers. Article 21 of the Constitution guarantees to every person the protection of life and personal liberty. The 'right to life', though the most fundamental of all, is one of the most difficult terms to define. The term cannot be confined only to the taking away of life. In an American case, it was pointed out that by the term 'life' something more is meant than mere animal existence.

11. We are, however, unable to subscribe to the submission of the petitioner's counsel that his right conferred by Article 21 was, in any way, infringed, by the

change of a policy of the State Government to take away the right of the fair price dealers to sell kerosene. The policy envisages the sale of kerosene by different means. In *Bhandara District Central Co-operative Bank Ltd. v. State of Maharashtra*, (AIR 1993 SC 59) it is firmly established that High Court cannot embark on an enquiry into public policy or investigate into questions of political wisdom or even to pronounce upon motive of the Legislature in enacting law which is otherwise within its legislative competence. The investigation, therefore, of the policy, which led to the State Government to change the manner and method of sale of kerosene, is beyond judicial purview.

12. Counsel read Article 19(g) with Article 21 of the Constitution in order to demonstrate that he had a fundamental right to sell kerosene and that the same had been un-justifidely taken away. Kerosene is an article controlled and governed by the provisions of the Essential Commodities Act. The State has the delegated power of the Central Government to regulate its sale. Previously, kerosene used to be sold by the licenced dealers but the Central Government, having realised that the sale through fair price shop was useful and beneficial for public, changed the method. No licenced dealer could insist on that he had a right to receive kerosene from the Government and to sell it to the public. Consequently, the submission of the petitioner's counsel about the breach of Article 21, is unsustainable.

13. In the circumstances mentioned above we are of the opinion that the directions given by the learned single Judge are not in accordance with the law and accordingly, the appeal succeeds and is allowed. The judgment of the learned single Judge is set aside and the writ petition of the respondent is dismissed with no orders as to costs.