

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 993 of 2008****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE N.V.ANJARIA**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

CHETANKUMAR JAYANTILAL VARAIYA....Petitioner(s)

Versus

DISTRICT SUPPLY OFFICER & 3....Respondent(s)

Appearance:

MR NM KAPADIA, ADVOCATE for the Petitioner(s) No. 1

MR MANAN MEHTA, AGP for the Respondent(s) No. 1 - 4

CORAM: **HONOURABLE MR.JUSTICE N.V.ANJARIA**

Date : 30/08/2017

CAV JUDGMENT

The grievance of the petitioner is in respect of cancelling the licence to run fair price shop.

2. What is prayed to be set aside are the orders dated 09th January, 2007 passed by respondent No.1 - District Supply Officer, order dated 21st March, 2007 passed by the Collector in Appeal No.03 of 2007 and the orders dated 06th November, 2007 and 19th June, 2007 passed by Revisional Authority - respondent No.3 herein. The petitioner has prayed to direct the respondents to revive the licence granted to him to run fair price shop and further to direct to continue and extend beyond 31st December, 2009.

3. Noticing the facts leading to filing the petition, the petitioner was granted licence No.141/84 by the Mamlatdar, Dhanera, to run fair price shop at Village Jadi, Taluka Dhanera, District Banaskantha. The licence was to deal in the grains, oil, sugar and kerosene as permitted subsequently. Licence granted on 21st January, 1983 came to be renewed from time-to-time upto 31st December, 2008. It was granted under the provisions of the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981. An agreement was executed pursuant to the grant of licence.

3.1 It is the case of the petitioner that though licence came to be validly granted and continued and renewed upto 2009, he received order dated 04th November, 2006 from respondent No.1 District Supply Officer providing for suspension of petitioner's licence for 90 days. The action was purportedly taken on the basis of the condition in paragraph 2(2.9) of the Resolution dated 02nd August,

2004 of the Civil Supplies Department of the State Government. The licence under the Scheme called Pandit Deendayal Grahak Bhandar Yojana to run the fair price shop would be grantable to educated unemployed persons only, and that the petitioner was not fulfilling the said condition. An order came to be passed on 04th November, 2006 suspending the licence. It appears that what was alleged against the petitioner was that he was working at Dhanera Post Office and therefore not being an educated unemployed, was not entitled to continue with the running of fair price shop.

3.2 The petitioner preferred Appeal No.03 of 2007 before the Collector. The Appeal came to be dismissed on 21st March, 2007, wherein the appellate authority - the Collector directed respondent No.1 - District Supply Officer to pass a fresh order. Another show-cause notice was issued to the petitioner on 14th December, 2006, whereafter respondent No.1 ordered cancellation of licence and further directed forfeiture of deposit by order dated 09th January, 2007. Against the order passed in Appeal, the petitioner filed Revision Application before respondent No.3 herein which came to be dismissed as per order dated 06th November, 2007 being the impugned order.

3.3 This petition witnessed the following interim order dated 16th April, 2008.

"Undisputely the petitioner had never applied for licence under the scheme floated in the year 2004, known as *Pt. Dindayal Upadhyay Grahak Bhandar Yojna*. The petitioner is a fair price shop licence holder

under the original scheme and the licence granted to him was renewed upto 31/12/2008. The scheme floated in the year 2004 gives guideline in cases where the Government decides to open new fair price shop and while opening such fair price shops, the Government has decided that educated unemployed persons be given preference while issuing licence to run a new fair price shop. The scheme has no relevance or concerned with the existing fair price shops and its dealers who engaged in public distribution system under the original order of 1981.

The present petitioner was enjoying Parvana / Licence since 1984. So his engagement in some other activity entrusted by the Postal Department, one of the Departments of the Government of India would not make the petitioner dis-entitle to continue with his fair price shop licence. It appears that when the petitioner was fair price shop dealer he was selected by the Central Government to undertake miscellaneous helping work so that Government of India may not have to establish a formal branch of the Post Office in a small village like the village of the petitioner.

There is enough strength in the argument of Mr.Kapadia, learned Advocate for the petitioner and therefore the petition requires to be admitted and is admitted. The order of cancellation of licence passed by the competent authorities is placed under suspension till the hearing and final disposal of this petition. The petitioner for all purpose shall be treated as fair price shop dealer and cards allotted to the present petitioner shall not be diverted merely on the ground that he has approached this Court challenging the decision of the order of Government. It is, however, clarified that the petitioner is supposed to abide by all the conditions of the contract entered into between the parties as per understanding arrived at under the original licence and conditions mentioned therein."

4. It was submitted by learned advocate Mr.N.M. Kapadia for the petitioner that he was granted licence under the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981 and was a dealer within the meaning of Clause 2(5) of the Order. It was submitted that definition of dealer meant a person etc., engaged in the business of purchase, sales, etc., of any essential articles, whether or not

in conjunction with any other business. Emphasising that it was permissible for a dealer to carry out the fair price business in conjunction with any other business, it was contended that the ground put-forth by the authorities for cancelling the licence was not acceptable. It was submitted that his duties at the Post Office which was for three hours a day, never affected the distribution of essential commodities to his consumers. He further submitted that there was a scheme of the Government which envisaged the postal services to be operated from the fair price shop. Learned advocate for the petitioner also relied on Condition No.4 of the Circular dated 08th August, 2006 to submit that selling of other miscellaneous articles was not prohibited. Therefore it could not be said that a fair price shop holder could not engage himself in having a supplementary source of earning.

4.1 Learned advocate for the petitioner submitted also that the authorities had rested their decision on Circular dated 02nd August, 2004, whereas the licence was granted in the year 1984 when the condition, now sought to be posed against him, was not in existence or operation. Learned advocate for the petitioner relied on decision of this Court in **Prathmesh Farms Private Limited v. State of Gujarat [2000 (3) GLR 2272]**, for the proposition that administrative Circular cannot operate retrospectively. In that case, under the Bombay Tenancy and Agricultural Lands Act, 1948, the petitioner company having applied for permission for acquiring the status of agriculturist, which was

granted in the year 1995. After acquiring status of agriculturist, the company carried out agricultural operations. Thereafter the company was issued notice on the basis of the Circular of the State Government issued in the year 1998, to show-cause as to why the status of agriculturist granted to it ought not to be hold violative of provisions of the Act and why it should not be withdrawn. It was inter alia held that the status as agriculturist having been granted, the same could not have been withdrawn by retrospective application by administrative instructions contained in the Circular.

4.2 On the other hand, learned Assistant Government Pleader Mr. Manan Mehta, contesting the case and the prayers, relied on the affidavit-in-reply. He submitted that the petitioner was getting remuneration as commission agent in the Department of Post. He referred to the communication from the postal authorities in which it was stated that the petitioner was working as Branch Post Master, Jadi from 15th May, 1986, had his working hours were from 08.30 a.m. to 11.30 a.m. and was receiving remuneration. It was submitted that the petitioner had a source of income and therefore he could not be treated as educated unemployed. Referring to the Resolution dated 02nd August, 2004, in particular condition No.2(2.9) thereof, it was submitted that under Pandit Deendayal Grahak Bhandar Yojana, licence to be granted for fair price shop was to be restricted to educated unemployed persons who had no source of income and that the licence to the petitioner was in frustration of the

very object of the policy.

5. Having noticed the relevant facts and rival contentions, recapitulating the undisputed facts, the petitioner was first granted licence on 21st January, 1983 and the conditions of grant was under the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981. The petitioner's licence was renewed from time-to-time in the year 1988, 1993, 1998 and 2003. It further appears that pursuant to complaint received in September, 2006, the authorities proceeded with and the impugned action was taken. Now, when it is an admitted position that the original grant of licence to the petitioner was under the Licensing Order of 1981, it could not have been cancelled except in accordance with the grounds of cancellation provided in the Order. Only grounds of cancellation of licence in the said Gujarat Essential Order, 1981 are mentioned in Clauses 8 and 9 namely that the grantee of the licence is convicted or any other condition in the Order was breached.

5.1 The ground which was sought to be made out against the petitioner to cancel his licence was not a ground of cancellation provided for in the 1981 Order. The grant of licence to the petitioner was not under the Pandit Deendayal Grahak Bhandar Yojana which was floated only in the year 2004. The Circular dated 02nd August, 2004 pertained to the said Yojana (Scheme) and the conditions therein operated for the Deendayal Yojana only. The licence was granted to the petitioner independent of the said Scheme under the Essential

Order of 1981 where there was no condition the breach of which is now posed and posted for cancellation.

5.2 It was an aspect not to be brushed aside that the definition of "Dealer" in the Order of 1981 permitted a person to carry out the business of purchase and sale of essential articles in conjunction with any other business, and further that condition in Resolution dated 08th August, 2006 allowed the shop holder to have a supplementary source of earning. In any view, the petitioner was educated unemployed when the licence was allotted to him in the year 1984. The further factual aspect emerges from the record is that the Government had mooted a policy wherein the postal services were allowed to be operated from the premises of the fair price shop in the villages to facilitate the villagers. The petitioner in the rejoinder affidavit mentioned several instances of persons who are differently treated though similarly situated. In view of all these aspects, merely because the petitioner became commission agent of the postal authorities and worked in such capacity to receive remuneration, it could not be said that he would stand disqualified for that reason, more particularly when he was appointed under the Essential Articles Order of 1981 in the year 1983, which did not contain the debilitating condition.

5.3 An eye-catching impermissibility in law is evident in the cancellation of licence of the petitioner which came to be acted upon based on condition No.2(2.9) in the Resolution dated 02nd August, 2004. The Circular was an administrative

instructions and came into force with effect from the date of the Resolution. The said condition could not have been applied retrospectively to attach a disjunction or disability on the petitioner on that count who was granted licence in the year 1984 and renewed time-to-time. It is well settled provision that the administrative instructions of Circular cannot have a retrospective application for its provision. The administrative circular will have prospective effect only. Resolution dated 02nd August, 2004 was in relation to the Pandit Deendayal Grahak Bhandar Yojana.

5.4 When the petitioner was granted licence, such Yojana was not in vogue, nor the petitioner was given licence to fair price shop under the said Scheme. Not only that, the licence of the petitioner granted under the Essential Article Order of 1981 came to be renewed even after coming into force of Circular dated 02nd August, 2004. The authorities could not have applied Circular dated 02nd August, 2004 and condition No.2(2.9) therein in case of petitioner whose licence was much prior in point of time and also renewed after the date of the Resolution, in retrospective manner.

6. Manifestly brought out from the above discussion and reasons, the infirmities in law in the decision of the authorities to cancel the licence of the petitioner do not allow the impugned orders to sustain. The petitioner is entitled to succeed.

7. For the reasons aforesaid, the impugned

order dated 22nd March, 2007 passed by respondent No.3 - Revisional Authority dismissing the Revision Application No.61 of 2007 of the petitioner is hereby set aside. Also stands set aside as a consequence, the respective orders passed by respondent No.1 - District Supply Officer, Banaskantha as well as order passed by the Collector, Banaskantha in appeal which came to be confirmed by the Revisional Authority. The licence of the petitioner for running the fair price shop in question stands revived. By virtue of interim order passed by this Court on 16th April, 2008 whereby cancellation of licence of the petitioner was suspended and the petitioner has accordingly continued to run the fair price shop and it was stated that petitioner's licence has been renewed and presently is within its validity period. The petitioner shall continue to have his fair price shop run. The renewal of licence of the petitioner in future shall abide by the rules and the laws applicable.

The petition stands allowed. Rule is made absolute.

(N.V.ANJARIA, J.)

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