

IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SMT JUSTICE SUNITA YADAV

ON THE 22nd OF AUGUST, 2023

CRIMINAL REVISION NO. 838 of 2012

BETWEEN:-

**PRIYA MAHILA PRATHMIK UPBHOKTA
SAHAKARI BHANDAR KEROSENE SEMI
WHOL SELLERS BLOCK DABRA, DISTT.
GWALIOR, THROUGH ITS PRESIDENT SMT.
SHARDA AGRAWAL W/O SHIR MUNNA LAL
AGRAWAL R/O HARISHANKARPURAM,
THROUGH MANAGER-KALLURAM KEWAT
S/O GOVIND DAS KEWAT, R/O
DHEEMERPURA DABRA, DISTRICT
GWALIOR (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI SANJAY BAHRANI - ADVOCATE)

AND

**STATE OF M.P. THROUGH COLLECTOR
(FOOD AND CIVIL SUPPLY), GWALIOR
(MADHYA PRADESH)**

.....RESPONDENT

(SHRI DHEERAJ KUMAR BUDHOLIYA – PUBLIC PROSECUTOR)

This appeal coming on for hearing this day, the Court passed the following:

ORDER

1. This petition is filed under Section 397/401 of the Criminal

Procedure Code against the order dated 11.10.2012 passed in Cr.A. No435/2012 passed X-Additional Session Judge, Gwalior by which appeal of the petitioner has been dismissed and confirmed the order of the Collector 11.9.2012 passed in case No.77/11-12/B-121 wherein under Section 6-A of the Essential Commodities Act 1955, 24000/- liter blue kerosene of petitioner society has been confiscated, deposit security of Rs.500/- has been forfeited and license of the petitioner society was cancelled.

2. The facts in brief to decide this petition are that the petitioner is a cooperative society which registered under Section 9 of the M.P. Co-operative Society 1960. The petitioner is doing his work of kerosene under the M.P. Kerosene Dealer Licensing Order 1979 (herein after referred as the “ Order 1979”) for that Collector Gwalior has issued license No.7 of semi wholes seller under the provision of Order 1979 to the petitioner for distributing the kerosene to fair price shop keeper.

3. On 27.9.2011 at about 12-45 p.m. Under instruction of the District Supply Officer, Civil Supply Officer accompanied by other officer, Shri Vipini Kumar Shrivastav inspected the premises of petitioner and found that despite having given notice no body responsible person was present in the said premises; therefore, at that time Inspecting Authority has informed to the manager of semi whole seller Licensee; however, he did not appear. During inspection, in 2-10 Tanker 24000/- liter blue kerosene was found which was to be distributed in public distribution. At the time of inspection price and stock list was not exhibited on inspection date on unauthorized godown and also, in the said premises stock, distribution

register and bill book etc were not find to be kept, nor it were produced for inspection that being so, on the basis of said allegation kerosene was seized by the inspecting authority and same was given on supurdgi to the wholesale dealer, thereafter, sample of the kerosene were collected and panchnama was prepared. Thereafter, a show cause notice in respect to confiscation of seized 24000/- liter kerosene for canceling the license, for forfeiting the security show cause notice has been issued on 29.9.2011(Annexure-P-4). Thereafter, reply to the said show cause notice was filed and denied the allegation leveled against the petitioner. Statement of Assistant Supply Officer Vipin Shrivastava was taken. On the basis of statement made by the Inspecting Authority and hearing the parties, the Collector passed the order for confiscation of kerosene oil and license has also been cancelled. Seized kerosene has been confiscated on 11.9.2012.

4. Being aggrieved by the aforesaid order passed by the Collector, the petitioner preferred an appeal under Section 6-C of the Essential Commodities Act before the Sessions Judge, Gwalior which was dismissed by impugned order. The petitioner has also filed another appeal against the order of cancellation of license before the Commissioner, Gwalior under Section 16 of the M.P. Kerosene Dealer Licensing Order, 1979 which was allowed.

5. Learned counsel for the petitioner argued that impugned orders of respondents are highly illegal, and contrary to law and deserves to be set aside. The learned Collector and Appellate Court did not consider the material available on record and ignore the statement of Vipin Shrivastav

who has not corroborated the case of respondents. It is further argued that the Collector and First Appellate Court have not considered the principle of law laid down by the Apex Court in the case *N. Nagendra Rao vs. State of M.P. 1994 AIR S.C. Page No.2663* in which the Appex Court has quashed such type of confiscation proceeding. Learned Courts below have also not considered the law laid down in the case of *Manoj Anna Bhandar vs. Collector and Licensing Authority, Gwalior reported in 2003 (1) EFR page No.632* wherein it has been held that for the technical breaches order of confiscation should not be made. The Courts below have also ignored the law laid down in the case of *Raymond Woolen Mills Ltd. vs. Director General reported in 2008(2) S.C.C. Page No.73* in which it is held that there being no charge or allegation in respect to termination of dealership in the notice of inquiry; therefore, the commissioner was not justified passing the order based on termination of dealership.

6. The petitioner also placed reliance the decision of this Hon'ble Court in the case of *Hukumchand Sahu vs. State of M.P. 2006 (1)EFR Page No.533* wherein it has been held that procedure as provided under Section 6-A and 6B (b) of the Act has to be followed before confiscation of essential commodity and the non-compliance of these provisions would render whole proceeding of Collector about initiation of confiscation proceedings illegal. It is further argued that in the case of *Oramaco Chemical Ltd vs. Gwalior Rayon Silk reported in 1987 JIJ page no.719*, wherein it has been held that refusal to furnish relevant material to meet the case amount to denial reasonable opportunity so,

such denial is denial of natural justice. This aspect has also been ignored by the learned Courts below.

7. Learned counsel for the State on the other hand supported the impugned order and prayed for dismissal of this petition.

8. Heard the learned counsel for the parties and perused the record.

9. It is well settled that the object of the provisions of revision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinize the orders which upon the face of them bear a token of careful consideration and appear to be in accordance with law. Revisional Jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. In the case of **Amit Kapoor Vs. Ramesh Chander, (2012) 9 SCC 460** it is held that revisional jurisdiction of the Court u/s 397 CrPC can be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily.

10. In the light of above settled principles, while examining the present case, it is found that the inspection by Civil Supply Officer accompanied by other officer under the instruction of District Supply Officer carried on

27.9.2011. During inspection, it was found that price and stock list was not exhibited on the premises, stock, distribution register and bill book were not produced for inspection so also were not found. In the tanker 24000/- kerosene was found.

11. The notice given to the petitioner (Annexure-P/4) indicates that all these facts have been narrated in that notice and an opportunity was provided to petitioner for explanation before confiscation proceeding by the Collector, District Gwalior. Therefore In this case also the Collector has duly followed the procedure of the Act as discussed above and allegation in respect to termination of dealership were given in the notice of inquiry; therefore, the petitioner does not get any benefit from the case of *Raymond Woolen Mills Ltd. vs. Director General reported in 2008(2) S.C.C. Page No.73*

12. The record further reveals that the petitioner gave reply to the notice to Collector, Gwalior as per Annexure-P/5 in which he has explained the facts in respect to allegation made in the notice. The evidence of Ramsevak Gupta, Assistant Supply Officer was also recorded and the opportunity to cross- examine this witness has also been provided to the petitioner; therefore, the argument of learned counsel for the petitioner is not tenable that the law laid down in the case of *Hukumchand Sahu (supra) and Oramaco Chemical Ltd (supra)* has not been followed.

13. Learned counsel for the petitioner has vehemently argued that during the investigation technical breaches were found and therefore, in the absence of any allegation of black-marketing the confiscation order

cannot be passed. However, the above arguments have no weight as the perusal of record reveals that at the time of inspection, apart from price list having not been exhibited, the stock register, distribution register and bill book etc were also not found to be maintained. The opportunity for reply was given to petitioner, thereafter, he filed photo copies of stock register, distribution register. The set photocopies were not certified by any competent officer/authority. Even the stock and distribution register was not signed by any competent officer. The record further reveals that on 12.10.2011 when the date was fixed for reply, the register and other documents were not filed and they were filed only on 16.11.2011; however, stock, distribution register etc. were not signed by any competent officer as discussed above. The aforesaid breach is not just a technical breach.

14. The evidence adduced on record also indicates that it is the duty of kerosene semi whole seller to distribute the kerosene to linked fair price shops according to the demand. In this case, the said kerosene oil ought to have been distributed before the date of inspection because kerosene has to be distributed between 12th to 19th of every month and the period in September, 2011 for distribution of kerosene has already ended and the order for distribution of kerosene for next month October, 2011 has not been sanctioned; therefore, the storage of kerosene at the time of inspection cannot said to be only a technical breach. Thus, the petitioner does not get any benefit from the case law i.e. **Manoj Anya Bhandar (supra) and N. Nagendra Rao (supra)** because as discussed above, besides technical breach, other breaches are also found to be proved.

15. In this case a single notice was given for confiscating kerosene oil as well as license. In this ground, learned counsel for the petitioner argued that the whole proceeding has become infructuous. However, he said argument is not acceptable because on account of this technical fault no injustice has been caused to petitioner as he was given an opportunity to reply the notice, to cross-examine the witness and also provided opportunity to be heard by both Collector and first appellate Court.

16. In view of the above discussion, the impugned orders of Collector and Xth-Additional Sessions are found to be in accordance with law and facts so also Judicial discretion is rightly applied by the Courts below. No palpable error is found in the impugned order.

17. Consequently, the present petition sans merit and is **hereby dismissed.**

Ahmad*

(SUNITA YADAV)
JUDGE