IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1393 OF 2011

STATE OF ORISSA & ANR. .... APPELLANT(S)

VERSUS

M/S. TULASIDAS MODI & ORS. ....RESPONDENT(S)

WITH

CIVIL APPEAL NO.6898 OF 2014
(@ SLP(C) No. 21037/2011)

CIVIL APPEAL NO. 6900 OF 2014
(@ SLP(C) No. 21400/2011)

CIVIL APPEAL NO. 6901 OF 2014
(@ SLP(C)No.21403/2011)

CIVIL APPEAL NO.6902 OF 2014
(@ SLP(C) No. 21408/2011)

CIVIL APPEAL NO.6903 OF 2014
(@ SLP(C) No. 21410/2011)

CIVIL APPEAL NO. 6904 OF 2014
(@ SLP(C) No. 21413/2011)

CIVIL APPEAL NO. 6905 OF 2014
(@ SLP(C) No. 21416/2011)

CIVIL APPEAL NO. 6906 OF 2014
(@ SLP(C) No. 21418/2011)

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Madhu Bala
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CIVIL APPEAL NO.6907 OF 2014

(@ SLP(C) No. 21420/2011)
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CIVIL APPEAL NO. 6908 OF 2014
(@ SLP(C) No. 21423/2011)

CIVIL APPEAL NO. 6909 OF 2014
(@ SLP(C) No. 21430/2011)

CIVIL APPEAL NO. 6910 OF 2014
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CIVIL APPEAL NO. 6911 OF 2014
(@ SLP(C) No. 21434/2011)

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CIVIL APPEAL NO. 6914 OF 2014
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(@ SLP(C) No. 26694/2011)

CIVIL APPEAL NO.6983 OF 2014
(@ SLP(C) No. 26683/2011)

CIVIL APPEAL NO. 6984 OF 2014
(@ SLP(C) No. 29070/2011)

O R D E R

1. Delay condoned.

2. Leave granted.

3. The challenge in this group of appeals is in respect of the common order dated 23.03.2010 passed by the High Court of Orissa at Cuttack holding Clause 5 of the Orissa Public Distribution System (Control) Order, 2008 (hereinafter referred to as "the Control Order") to be legally and constitutionally fragile and consequently directing the State to modify the aforesaid clause of the Control Order to bring it in conformity with law.

4. Clause 5 of the Control order which was under challenge before the High Court, is in the following terms:

> "No dealer shall hold a license to deal in a commodity under the Public Distribution System under this Order if he or any of his family members have a commercial interest in a business in or are commercial users, of the said commodity or a commodity closely related to the said commodity or is a member of any Advisory or Vigilance Committee or any other Committee entrusted with supervision of the Public Distribution System.
>
> Explanation :- For the purpose of this clause,
>
> (i) Commercial interest shall include

> business partnership and a relationship of tenant/landlord of a commercial building.
>
> (ii) Diesel and Petrol shall be deemed to be commodities closely related to Kerosene.

(iii) Owner of a commercial vehicle including boat shall be deemed to be a commercial user of Diesel/petrol.

(iv) Family shall mean a family unit consisting of the individual concerned, his/her spouse, their unmarried sons and daughters and married sons and dependent parents;

Provided that the prohibition under this clause shall not apply in relation to the vehicles meant for the primarily used for transportation of Kerosene from oil depots of the oil marketing companies to the business premises of a wholesaler agent of an oil marketing company;

Provided further that the license shall not be cancelled for violation of provisions of this clause if the dealer or his family member, as the case may be, relinquishes his interest in such other businesses within a period of three months from the date coming into force of this order".

5. At the very outset, we would like to clarify that the present group of cases have been filed by persons who are either dealers in Kerosene or who intend to obtain licenses to deal with kerosene. The views expressed and conclusions reached by us with regard to the validity of Clause 5 of the Control Order must, therefore, necessarily be in

respect of kerosene licenses alone and not any other PDS items, inasmuch as under the Control Order, particularly Clause 2(n), various others PDS items like rice, wheat, sugar etc. also come within the fold of the Control Order.

6. The challenge before the High Court was on two short grounds. The competence of the State Government to enact the Control Order was called into question by contending that the particular Government notification under Section 5 of the Essential Commodities Act did not empower the State Government to frame the Control Order without prior concurrence of the Central Government. It was also

urged that petroleum and allied products, being Union subjects, the State is denuded of the powers to frame the Control Order. The High Court negatived the aforesaid contention.

7. The second contention urged before the High Court was that the Control Order had imposed restrictions which were not reasonable within the meaning of Article 19(6) thereby infringing Article 19(1)(g) of the Constitution. The High Court appears to have been found merit in the aforesaid contention

advanced by the respondents/writ petitioners. Hence, the impugned direction to the State to modify the Control Order.

8. We have heard learned counsel for the appellants as well as respondents.

9. Learned counsel for the appellant-State by referring to the provisions of Section 3 read with Section 5 of the Essential Commodities Act and relevant Government notifications issued under Section 5 has submitted that the State Government is fully empowered to enact the Control Order. The aforesaid contention on behalf of the State counsel was really in answer to the separate appeals filed by the respondents challenging the finding of the High Court insofar as the authority of the State Government to frame the Control Order is concerned. Learned counsel, by referring to the counter affidavit filed before the High Court, has sought to persuade the Court to hold that the restrictions imposed by Clause 5 are indeed prompted by overwhelming public interest and designed to effectuate the purpose of the Public Distribution System and hence the public good.

10. The contentions of the learned counsel for the respondents-writ petitioners, who are also appellants in some of the appeals before us challenging the part of the High Court's order, as noticed above, need not be noticed in any detail as the same are in reiteration of the arguments advanced before the High Court.

11. Insofar as the issue with regard to jurisdiction of the State Government to frame the Control Order is concerned, we do not consider it necessary to look into the matter beyond the arena of Section 5 of the Essential Commodities Act and the Government notifications issued in this behalf. Under the notification dated 30th November, 1974, on which reliance has been placed by respondents/writ petitioners, prior concurrence of the Central Government is required only when the Control Order framed by the State Government is inconsistent with any such Control Order, as may have been framed by the Central Government under Section 3 of the Act. No such order of the Central Government under Section 3 of the Act has been brought to our notice in spite of repeated queries so as to enable us to

assess the merit of the contentions advanced to the effect that the State Control Order is inconsistent with or in variance with any order of the Central Government in force and therefore contrary to the relevant G.O. issued under Section 5 of the Act.

12. The provisions of Section 5 of the Act have been specifically designed to delegate the power of the Central Government under the Act to the State Government(s) and the restrictions contained in the

Government G.O. referred to above not being applicable to the present case we failed to see how the State Government can be understood to be without authority or jurisdiction to enact the Control Order in question.

13. Coming to the second issue, we have considered the stand taken by the State in its counter affidavit before the High Court and reasons which had prompted the State to enact Clause 5 in the form in which it has been noticed. Clause 5 extracted above defines the term 'Family' to include the spouse, unmarried sons and daughters, married sons and dependent parents of a dealer holding a license. The definition of 'Family' certainly does

not appear to us to contain any unnatural extension of the normal meaning of the word 'Family' and, apart from the immediate members, others are not included in the definition. The proviso to Clause 5 contain certain exemptions which recognize a legitimate business in transportation of Kerosene from oil depots of the oil marketing companies to the business premises by keeping such business outside the purview of the restrictions contained therein. A plain reading of the restrictions imposed by Clause 5 would show that there is a reasonable connection between the restrictions imposed and the object behind the Public Distribution System. In fact, on a plain reading of the restrictions, it appears to us that the same have been introduced in the Control Order to ensure more effective and fair distribution of kerosene keeping the interest of the consumers of the said product in mind. If that be so, it cannot be held that the restrictions imposed

by Clause 5 of the Control Order are in any manner unreasonable so as to offend Article 19(1)(g).

14. Both the questions arising in this group of appeals having been answered in the aforesaid manner

we set aside the order of the High Court to the extent challenged in the appeals filed by the State. We also uphold the validity of Clause 5 of the Control Order, insofar as the restrictions on kerosene is concerned. All questions regarding the validity of the Control with regard to dealership licenses in other PDS items mentioned in the Control Order are kept open.

15. Consequently, civil appeals are allowed.

.....J.
[RANJAN GOGOI]

NEW DELHI
23RD JULY, 2014

.....J.
[M.Y. EQBAL]

ITEM NO.103 COURT NO.10 SECTION XIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 1393/2011

STATE OF ORISSA & ANR. Appellant(s)

VERSUS

M/S TULASIDAS MODI & ORS. Respondent(s)
(With office report)
WITH
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SLP(C) No. 26683/2011
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SLP(C) No. 29070/2011
(With appln.(s) for c/delay in filing & refiling SLP and Office Report)

SLP(C) No. 31777/2013
(With appln.(s) for directions and c/delay in filing SLP and Office Report)

SLP(C) No. 31776/2013
(With appln.(s) for directions and c/delay in filing slp and Office Report)

SLP(C) No. 31933/2013
(With appln.(s) for c/delay in filing SLP, for directions and Office Report)

Date : 23/07/2014 These matters were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE M.Y. EQBAL

For Parties Mr. Shibashish Misra ,Adv.

Mrs. Kirti Renu Mishra ,Adv.
Ms. Apurva Upmanyu,Adv.

Mr. Soumyajit Pani,adv.
Mr. Vinodh Kanna B. ,Adv.

Mr. Kedar Nath Tripathy ,Adv.
Mr. Mohit Mudgil,Adv.

Mr. B. Krishna Prasad ,Adv.

Mr. Sibo Sankar Mishra ,Adv.
Mr. A.Pathak,Adv.

Mr. Ashok Panigrahi,Adv.

Ms. Shalini Chandra ,Adv.

UPON hearing the counsel the Court made the following

O R D E R

No orders on interlocutory applications.
Delay condoned.''
Leave granted.
All appeals are allowed in terms of the signed order except SLP(C)Nos. 31776, 31777 and 31933 of 2013 which are dismissed.

(MADHU BALA)
COURT MASTER

(SNEH LATA SHARMA)
COURT MASTER

(Signed order is placed on the file)