

PETITIONER:
M/S. DURGA OIL COMPANY & ANR

Vs.

RESPONDENT:
STATE OF UP & ORS

DATE OF JUDGMENT: 29/07/1998

BENCH:
G.B. PATTANAIK, A.P. MISRA

ACT:

HEADNOTE:

JUDGMENT:

J U D G E M E N T

G.B. PATTANAIK, J.
Leave granted.

This appeal by grant of Special Leave is directed against the judgment dated 2nd September, 1997, of the Allahabad High Court in civil Misc. Writ Petition No. 28539 of 1997. The Writ Petition had been filed by the appellant challenging the order dated 14th August, 1997 passed by the District Supply Officer, Shahjahanpur calling upon the appellant to stop using the underground tank and dispensing pump unit inter alia on the ground that there is no embargo either under the provisions of the Petroleum Act and the Rules framed thereunder or in the licence in form XI which had been granted to the appellant under the Petroleum Rules not to sell High speed Diesel by using the underground tank and the pump unit attached to the same. The High Court by the impugned judgment considered the different provision of the Act and the Rules as well as the Forms, More particularly, Forms XI and XII and came to hold that a licensee under Form XI is not entitled to store High Speed Diesel in an underground tank and sale from the same by using a pump unit. With the aforesaid conclusion the Writ Application having been dismissed the appellant has preferred the present appeal.

Mr. Sudhir Chandra, the learned senior counsel appearing for the appellant contends that an analysis of the relevant provisions of the Act and the Rules will make it crystal clear that there is no prohibition contained in the licence form, Form XI granted to the appellant from selling high speed diesel from the underground tank with a hand unit attached to the same and the High Court committed serious error in arriving at a conclusion that the licence under Form XI does not authorise the licensee to sell high speed diesel from an underground tank with a hand unit attached to the same. In order to appreciate the correctness of the aforesaid submission it would be necessary to examine the relevant provisions of the Act and the Rules framed thereunder.

The expression 'petroleum' has been defined in Section 2 (a) of the Act to mean thus:-

2(a) 'Petroleum' means any liquid hydrocarbon or mixture of hydrocarbons, and any inflammable mixture (liquid, viscous or solid) containing any liquid hydrocarbon"

The said 'petroleum' is divided into 3 classes - class A, B and C and petroleum class B has been defined in class 2(bb) thus:-

"2(bb) - 'Petroleum Class B' means petroleum having a flash -point of twenty- three degrees Centigrade and above but below sixty-five degrees Centigrade".

It is not disputed that high speed diesel with which we are concerned in the present appeal is petroleum Class B.

Section 4 of the Act enables the Central Govt. to make Rules for import, transport and storage of petroleum.

Under Section 29 of the Act, Central Govt. has been authorised to make rules in respect of any matter ancillary to such rules as necessary to protect the public from danger arising from the import, transport, storage production refining or blending of petroleum.

Section 7 of the Act provides that no licence is required for transport or storage of petroleum Class B if the total quantity in possession at any one place does not exceed 2,500 liters and none of it is contained in a receptacle exceeding one thousand liters in capacity.

Under the Rules the expression 'container' has been defined in Rule 2 (vii) to mean a receptacle for petroleum not exceeding 1,000 liters in capacity.

The expression 'form' has been defined in Rule 2(xii) to mean a form in the First Schedule.

The expression 'petroleum in bulk' has been defined in Rule 2(xv) to mean petroleum contained in a tank irrespective of the quantity of petroleum contained therein.

The expression 'tank' has been defined in Rule 2(xxii) to mean a receptacle for petroleum exceeding 1,000 liters in capacity.

Under Rule 4, containers exceeding one litre in capacity for petroleum Class A, and five liters in capacity for petroleum Class B or petroleum Class C, shall be of a type approved by the Chief Controller.

Rule 6 provides for container for petroleum Class B or Class C and it requires that such container should be constructed of steel or iron and

be of a type approved by the Chief Controller.

Rule 124 provides that every tank of or receptacle for the storage of petroleum in bulk shall be constructed of iron or steel in accordance with the codes or specifications approved by the Indian Standards Institution or any other code or specification approved in writing by the Chief Controller.

Under Rule 141, licences under the Rules may be granted by the licensing authorities set forth in the First Schedule in the Forms specified for the purpose and on payment of a fee specified therein. Article 4 of the First Schedule prescribes Form XI to import and store petroleum Class B otherwise than in bulk in quantity not exceeding 25,000 liters and the authority empowered to grant such licences is the District Authority. Article 5 of the said Schedule prescribes Form XII for storing petroleum in tank or tanks and the Chief controller or Controller of Explosives authorised in this behalf by the Chief Controller is the authority empowered to grant licence.

Apart from the aforesaid provisions of the Act and the rules it would be appropriate to notice the order called the U.P. High Speed Diesel Oil and Light Diesel Oil (Maintenance of Supplies and Distribution) Order, 1981, framed by the State Govt. under the provisions of Essential Commodities Act. Under the aforesaid order 'Dealer' has been defined in Section 2(d) to mean -

" 2 (d) - 'dealer' means a person engaged in the business of purchase, sale or storage for sale of High Speed Diesel Oil or Light Diesel Oil or both but does not include an oil company."

Retailer has been defined in Section 2(i) to mean thus-

" 2 (I) - 'retailer' means a dealer who is not a wholesaler.

Wholesaler has been defined in Section 2(n) thus:-

"wholesaler' in the case of Light Diesel Oil means a dealer who deals in a light diesel oil exceeding 100 liters in a single transaction and in the case of High Speed Diesel Oil a dealer who sells High Speed Diesel Oil by means of dispensing pumps."

Section 3 of the aforesaid order prohibits carrying on business as a dealer except under and in accordance with the terms and conditions of a licence granted under the Order.

a licence under the order is granted in Form C and would subject to the conditions specified therein as is apparent from Section 4(b) of the order.

Form C provides 4 columns required to be filled up

while granting a licence.

Correctness of the submission Mr. Sudhir Chandra, learned senior counsel appearing for the appellant has to be examined in the light of the aforesaid provisions. There is no dispute that the appellant has been granted a licences in Form, XI for import and storing of petroleum Class B otherwise than in bulk, in quantity not exceeding 25,000 liters. From the definition of the expression 'container' in Rule 2(vii) and 'tank' in Rule 2(xxii) it is apparent that a receptacle for petroleum upto 1,000 litre is called a 'container' and a receptacle exceeding 1,000 litre is called a 'container' and a receptacle exceeding 1,000 liters in capacity is called a 'tank'. From the expression 'petroleum in bulk' defined in Rule 2(xv) read with the definition of tank in Rule 2(xxii) it is crystal clear that whenever petroleum more than 1,000 liters is contained in a receptacle then it must be held to be petroleum in bulk irrespective of the quantity of petroleum contained therein. In other words in a container whether 1,001 liters is stored or 10,000 liters is stored it would be a 'petroleum in bulk' within the ambit of Rule 2(xv).

Bearing in mind the aforesaid analysis if the First Schedule and the forms of licence contained therein are examined then Form XI can be held to be meant for importing and storing petroleum Class B otherwise than in bulk of a total quantity not exceeding 25000 liters. In other words the holder of a licence in Form XI can store petroleum Class B in different containers each of which would not exceed 1000 liters in capacity and subject to a total quantity of 25000 liters. when such licensee stores the petroleum Class B in a tank meaning thereby in excess of 1000 liters then it would be a case of storage of petroleum in bulk and for such storage licence is required to be obtained in Form XII and the authority empowered to grant such licences is the Chief Controller or a Controller empowered to grant such licence is the Chief Controller or a Controller of explosives authorised in this behalf by the chief Controller. The appellant being a licensee for importing and storing petroleum Class B in Form XI is not entitled to store the same in tank as that would be a storage of petroleum in bulk and for such storage licence in Form XII to be granted by the Chief Controller or a Controller of Explosives authorised by such Chief Controller is required. Since the appellant does not possess the licence in Form XII, was not entitled to store the High Speed Diesel in an underground tank and sale from the same by using of pump unit. the conclusion of the High Court, therefore, does not suffer from any illegality to be interfered with by this Court.

Mr. Sudhir Chandra, the learned senior counsel appearing for the appellant in course of his submissions contended, that in interpreting a particular provision like the one with which we are concerned in the present case the courts should adopt the principles of purposive interpretation as indicated in the decision of this Court in *Forest Range Officer & Ors. etc. vs. P. Mohammed Ali & Ors. etc.* 1993 (3) Suppl. supreme Court Cases 627, and if the purpose behind the provisions of the Act and the Rules of the licence form thereunder a purpose of which are required to be achieved, namely, the safety measures to deal with highly inflammable to article is borne in mind, it would be appropriate to hold that the High Speed Diesel can be stored in an underground tank which is the safest mode of storage. We have not been persuaded to accept this submission inasmuch as the Rules itself provide for different types of licences conferring authority on different persons to grant

such licences. The Act or the Rules do not prohibit storage of High Speed Diesel in quantity more than 1000 liter in an underground tank but what is necessary in such a case is that the licence has to be obtained in Form XII from the Chief Controller the appellant admittedly being a licensee on Form XI granted by the District Magistrate cannot claim to be entitled to store High Speed Diesel in an underground tank and sale from the same as that would be a storage of petroleum in bulk and it would be a contravention of the terms and conditions of licence itself. We have, therefore, no hesitation to reject the aforesaid submission or Mr. Sudhir Chandra, learned senior counsel appearing for the appellant.

In view of our aforesaid conclusion it is not necessary to examine the effect of the provisions of the UP High Speed Diesel Oil and Light Diesel Oil (Maintenance of Supplies and Distribution), Order, 1981, framed by the State Govt. under the provisions of Essential Commodities Act, though there cannot be a dispute that the State Govt. by such orders can regulate the storage and supply of the High Speed Diesel and put restrictions and conditions as authorised under the State Order.

In the aforesaid premises, the appeal fails and is dismissed. But in the circumstances there will be no order as to costs.