

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6345 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
DHORAJI KIRANA BHANDAR

Versus

STATE OF GUJARAT

-----  
Appearance:

MR YS LAKHANI for Petitioner

MR DA BAMBHANIA for Respondent No. 1

GOVERNMENT PLEADER for Respondent No. 2

-----  
CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 30/09/97

ORAL JUDGEMENT

This petition challenges the orders passed by the Civil Supplies authorities for confiscating the stock of foodgrains and pulses worth Rs.24,062/50.

2. Normally this Court would not interfere under Article 226 or 227 of the Constitution with the

concurrent findings given by the three authorities about the breach of the terms and conditions of the licence alleged to have been committed by the petitioner in carrying on business of selling foodgrains and pulses. However, the peculiar facts of the case are that the shop of the petitioner (not a fair price shop) was inspected on March 12, 1993 and the alleged procedural breaches were found in respect of a few days in not writing the price of the commodities variation between the physical stock and the stock registered on March 12, 1993 and not giving bills to customers on that day.

3. The reason given by the petitioner, a petty trader, was that his younger brother got married and therefore, the shop had remained closed between March 8 and 12, 1993. As the petitioner was busy with the said occasion and preparation therefor, the aforesaid procedural requirements were not complied with by the petitioner and hence when the shop was reopened on March 12, 1993 there was a big rush of the customers and only one person was there to handle the business and the rush and therefore, the petitioner was not able to update the register at that point of time or to issue the bills.

4. In view of the fact that the authorities have not disputed the aforesaid case of the petitioner that there was a marriage of his brother and therefore, the shop could not be opened between March 8 and 12, 1993 which resulted into heavy rush on March 12, 1993 and also in view of the fact that there does not appear to be any dispute with regard to the fact that the accounts of the petitioner's business and stock register were properly maintained till March 8, 1993, it cannot be said that the breach of the terms and conditions of the licence and the noncompliance with the procedural requirements during that period was such that goods worth Rs.24,062/- were required to be confiscated. The extent of the penalty imposed by the respondents appears to be arbitrary and disproportionate in the facts and circumstances of the case. In view of the facts and circumstances of the case the orders passed by the authorities are required to be modified. The amount of the goods to be confiscated could not have been more than a token amount. Having heard the learned counsel for the parties and in order to shorten the litigation, the amount is fixed at Rs.2400/-.

5. At the same time it is required to be noted that the petitioner was given opportunity of hearing before the appellate authority but he did not avail of that opportunity and did not assist the appellate authority properly. It would, therefore, be just and proper to

direct the petitioner to pay the respondents costs of this litigation quantified at Rs.1,000/-, which shall be deposited by the petitioner with respondent no.2 within three weeks from today.

6. The petition is allowed to the aforesaid extent. The impugned orders are modified so as to reduce the amount of goods to be confiscated to Rs.2400/-.

The petitioner shall pay the respondents costs of this litigation qualified at Rs.1000/-. This amount shall be deposited by the petitioner with respondent no.2 within three weeks from today.

7. Rule made absolute to the aforesaid extent and subject to the aforesaid conditions.

---