

(2003) 02 DEL CK 0018
In the Delhi High Court
Case No : C.W.P. No. 6851 of 2001

Brij Kod

APPELLANT

Vs

Commissioner Food and Supplies and Others

RESPONDENT

Date of Decision : 03-02-2003

Acts Referred:

Citation : (2003) 5 AD 431 : (2003) 104 DLT 467

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Vineet Chadha, for the Appellant; Kailash Gambhir, for the Respondent

Judgement

A.K. Sikri, J.—This writ petition is filed against the order dated 28th September, 2001 passed by the Commissioner, Food and Supplies, Government of NCT of Delhi in Appeal No. 50/01 which was preferred by the petitioner. It is not the first time that the petitioner has approached this Court. Earlier the Commissioner, Food and Supplies had passed order dated 23rd June, 2000 against which petitioner had preferred CWP No. 3782/2000. It may be mentioned at this stage that petitioner as well as the respondent No. 5 had filed appeals against rejection of their applications for grant of license to run kerosene oil depot in the notified area. By impugned order dated 23rd June, 2000 both these appeals were dismissed. However, while dismissing the appeal of respondent No. 5, the Commissioner passed an order granting him additional license. In the aforesaid CWP No. 3782/2000 apart from challenging order on the ground that the impugned order was a non-speaking order, another contention raised by the petitioner was that no such power lay with the Commissioner to grant additional license.

2. This writ petition was disposed of vide order dated 27th August, 2001 wherein contention regarding power of the Commissioner to grant such additional license was noted. However, this contention was not dealt with by this Court as this writ petition was allowed on the second ground, namely, impugned order dated 23rd

June, 2000 passed by the Commissioner was non-speaking order and Therefore matter was remitted back to the Commissioner for fresh adjudication with a reasoned order. The relevant observations in order dated 27th August, 2001 allowing the writ petition in the aforesaid terms are to be the following effect:

"At this stage it is not necessary to deal with the sustainability of this plea because I find that the impugned order dated 23rd June, 2000 does not record any reason whatsoever for dismissing the petitioner's appeal. Accordingly it is made clear that while setting aside the order in appeal at this stage I am not interfering with the grant of license to M/s. Pankaj KOD. Similarly the license of Shiv KOD is also to continue purely as an interim measure so as to avoid inconvenience to consumers. The Commissioner is directed to dispose of the appeals in respect of M/s. Brij KOD (68/2000) and M/s. Shiv KOD (65/2000) on or before 30th September, 2001 with a reasoned order. The petitioner will be entitled to challenge any order passed by the Commissioner, Food and Supplies, Delhi in accordance with law."

3. After the remand of the case to the Commissioner, Food and Supplies, the Commissioner heard both the petitioner as well as respondent No. 5 and has passed impugned order dismissing the appeal of the petitioner. Perusal of the impugned order however shows two infirmities which are:

(a) Contention of the petitioner in respect of power of the Commissioner to grant additional license has neither been adverted to nor decided.

(b) The second infirmity is more serious. As noted above, this Court in its order dated 27th September, 2001 had quashed the impugned order dated 23rd June, 2000 on the ground that no reasons whatsoever were recorded by the Commissioner while dismissing the petitioner's appeal. Inspire of this categorical finding which was not challenged by the respondents and in view thereof matter was remitted back to the Appellate Authority, the Appellate Authority has attempted to justify earlier order by observing that full reasons were given in rejecting the appeal of the petitioner even by an earlier order and the observations to that effect are as under:

"10. As regards plea of both the appellants for allotment of an additional license keeping in view the number of kerosene oil cards in the area, the then Commissioner, Food and Supplies took note of the card position in the area which warranted opening of one more kerosene oil depot in the area. The then Commissioner, Food and Supplies decided to allot this depot to M/s. Shiv KOD by granting the license for by Sh. Praveen Tomar of M/s. Shiv KOD. The then Commissioner, Food and Supplies gave full reasons for this selection when he wrote in his order....."

4. This approach of the Commissioner, in the teeth of what was held by this Court, was clearly uncalled for and totally improper, to say the least.

5. Such an order cannot be sustained and is set aside. The matter is remitted

back to the Commissioner, Food and Supplies for adjudication of petitioner's appeal afresh who shall decide the same within thirty days from first appearance before him and pass speaking order. It is made clear that the Commissioner shall also decide the power as to whether there is any power to grant additional license in terms of Rule 8(4) of the Delhi Kerosene Oil (Export and Price) Control Order, 1962. The directions given in order dated 27th August, 2001 would continue to operate till the decision of the Commissioner, Food and Supplies.

6. The writ petition stands disposed of. Parties to appear before the Commissioner, Food and Supplies on 26th February, 2003.