
(1996) 03 AHC CK 0037
In the Allahabad High Court

Daulat Ram Gupta

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 07-03-1996

Acts Referred:

Citation : (1996) 03 AHC CK 0037

Final Decision : Allowed

Judgement

R.A.Sharma, J.—Petitioner was a retail dealer under U. P. High Speed Diesel Oil & Light Diesel Oil (Maintenance of Supplies and Distribution) Order, 1981 (hereinafter referred to as the Control Order). Vide order dated 421983 the respondent No. 2 cancelled petitioner's licence on the ground that he is carrying on the business within a radius of five Kms. of regular diesel retail outlet of a company in violation of Government Order dated 1891987 which has been approved by Hon'ble Supreme Court. Being aggrieved, the petitioner has filed this writ petition challenging both direction No. 1 of the Government Order dated 1691987 and the order dated 421988. While entertaining the writ petition this Court granted interim order staying the operation of the impugned orders.

2. State has filed counteraffidavit in reply to the writ petition. We have heard learned counsel for the petitioners and learned Standing Counsel for respondents.

3. The Control Order under which the petitioner was granted a licence has provided for licence for both wholeseller and retailer and there is no provision therein prohibiting the grant of a retail/petty diesel licence within a radius of 5 Kms. of a regular diesel retail outlet. However, the Government has issued an order dated 1691987 giving direction regarding the appointment of retail/petty dealer under the Control Order direction No. 1 of which is as under:

"1. The Collector should not appoint any diesel dealer within 5 Kms. radius of a regular diesel retail outlet of a company."

The reasons for giving the above direction, as contained in the Government Order itself are as under:

"Generally it has been the experience that a regular diesel dealer outlet serves the purpose of the consumers of its 5 Km. area around it and remains self dependent financially. Therefore, it will be proper and desirable to appoint a retail seller or petty diesel dealer outside the 5 Kms. circle of the oil company."

4. Only provision under which the State Government can issue any direction is Clause 16(6) of the Control Order, which is reproduced below :

"16(6) Every dealer shall comply with the general or special directions not inconsistent with this Order, that may be given to him in writing by the State Government, the Commissioner, Food and Civil Supplies or the Collector for the purpose of giving effect to the provisions of this Order and any contravention of such directions shall be deemed to be a contravention of this Order."

Under the above provisions directions which are not inconsistent with the Control Order can be issued by the State Government, the Commissioner or the Collector, "for the purpose of giving effect to the provisions of this order." The Control Order does not prohibit either expressly or by necessary implication the grant of retail dealer licence to a person within 5 Kms. of the radius of regular diesel outlet. There being no such prohibition under the Control Order, the direction No. 1 reproduced hereinbefore, issued by the State Government is inconsistent with and is contrary to it.

5. That apart, imposing ban against grant of licence or carrying on business on the general assumption is not justified. Whether a regular diesel retail outlet can serve the need of the consumers within radius of 5 Kms. depend on several factors, such as population of the area, type of the people living therein and supply of the diesel to the retail outlet. What is true about one locality/area may not be true in the other locality/area. This direction, as such, is arbitrary, being based on unwarranted assumption.

6. The Government Order is also violative of Article 19(1)(g) of the Constitution and is not saved by its Clause (6). Every citizen has a fundamental right to carry on any occupation, trade or business guaranteed to him by Article 19(g) of the Constitution. Under Clause (6) of the said Article the State can, by law, impose reasonable restrictions on the exercise of such a right. Restriction can be imposed by "law" which means legislative enactment and the subordinate legislation. But a restriction cannot be imposed by executive orders unsupported by the law.

7. Observations in the impugned order, dated 921988 to the effect that Supreme Court has approved the impugned Government Order, dated 1891987, are factually incorrect. What happened was that by a Government Order issued prior to the impugned Government Order similar restrictions were imposed prohibiting the grant of petty dealer licence within a radius of ten Kms. of regular diesel retail outlet. That Government Order was challenged before the Supreme Court, but during the pendency of the cases before the Supreme Court the impugned Government Order, dated 1691987 was issued. Supreme Court dismissed the

petitions giving liberty to the party aggrieved to approach the High Court under Article 226 of the Constitution against the new Government Order. Judgment of the Supreme Court is reproduced herein below;

"It is stated by learned counsel for the State of U. P. that impugned orders/ notification have been withdrawn and superceded by a fresh order dated 16/9/1987. Therefore, we do not find any necessity to decide these cases on merits. These appeals/petitions are disposed of without expressing any opinion on the merits. All the contentions are left open. If the appellants or petitioners are aggrieved by latest order passed by the Government of U. P. they are at liberty to approach the High Court under Article 226 of the Constitution.

New Delhi:

October 26, 1987."

The impugned order was thus also passed on erroneous assumption.

8. For the reasons given above, this writ petition is allowed. The direction No. 1 contained in the Government Order, dated 16/9/1987, reproduced hereinbefore, and the order dated 4/2/1983 cancelling the petitioner's licence passed by the Additional District Magistrate (Supply) Bareilly, are quashed.