

(1995) 03 AHC CK 0019

In the Allahabad High Court

Case No : Civ. Misc. Writ Petition No. 2528 of 1988

Daulat Ram Gupta

APPELLANT

Vs

State of Uttar Pradesh and others

RESPONDENT

Date of Decision : 07-03-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 226
Essential Commodities Act, 1955 — Section 3

Citation : AIR 1996 All 30

Hon'ble Judges : R.A. Sharma, J;D.K. Seth, J

Bench : Division Bench

Advocate : Mr. Ramendra Asthana, for the Appellant;

Final Decision : Allowed

Judgement

R.A. Sharma, J.—Petitioner was a retail dealer under U. P. High Speed Diesel Oil and Light Diesel Oil (Maintenance of Supplies and Distribution) Order 1981 (hereinafter referred to as the Control Order). Vide order dated 4-2-1988 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 out let of a company in violation of Government Order dated 10-9-1987 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 10-9-1987 and the order dated 4-2-1988. While entertaining the writ petition this Court granted interim order staying the operation of the impugned orders.

2. State has filed counter affidavit in reply to the writ petition. We have heard learned counsel for the petitioner and learned standing counsel for respondents.

3. The Control Order under which the petitioner was granted a licence has provided for licence for both whole seller and retailer and there is no provision therein prohibiting the grant of a retail/ petty diesel licence within a radius of 5 km. of a regular diesel retail out-let. However, the Government has issued an

order dated 16-9-1987 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 out let 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 out let serves the purpose of the consumers of its 5 kms. area around it and remains self dependant financially. There- fore, 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 cl. 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 licencing to a person within 5 kms. of the radius of regular diesel out let. 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 out let 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 out let. 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 Art. 19(1)(g) of the Constitution and is not saved by its cl. (6). Every citizen has a fundamental right to carry on any occupation, trade or business guaranteed to him by Art. 19(g) of the Constitution. Under cl. (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 9-2-1988 to the effect that Supreme Court has approved the impugned Government Order dated 18-9-1987, 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 out-let. 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 16-9-1987 was issued. Supreme Court dismissed the petitions giving liberty to the party aggrieved to approach the High Court under Art. 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 Art. 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 D/- 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.

9. Petition allowed.