
(2005) 06 AHC CK 0007
In the Allahabad High Court
Case No : C.M.W.P. No. 38990 of 2005

Dilip Oil Co.	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 13-06-2005

Acts Referred:

Uttar Pradesh Scheduled Commodities Distribution (Amendment) Order, 2004 —
Section 28(1)

Citation : (2005) 4 AWC 3381

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Ashish Kumar Singh, Ajay Kumar Singh and R.N. Singh, for the Appellant; Arvind Srivastava, S.C. and Navin Sinha, for the Respondent

Judgement

Arun Tandon, J.—Heard Sri R.N. Singh senior advocate assisted by Sri A. K. Singh advocate on behalf of the petitioner, Sri Navin Sinha senior advocate assisted by Sri Arvind Srivastava advocate on behalf of respondent No. 6 and standing counsel on behalf of respondent Nos. 1, 2, 4 and 5.

2. For the purpose of distribution of Super Kerosene Oil/Light Diesel Oil in rural areas through fair price shop agents the State Government came out with a policy decision as contained in Government order dated 19.5.1990. Under the said Government order it was provided that there shall be only one block distribution centre/whole seller for each block and all fair price shop agents/retailers shall obtain supply of kerosene oil from the said wholesale dealer. It was further provided that the whole sellers appointed by the oil companies may be appointed block distributor under the Uttar Pradesh Kerosene Oil Order, 1962. Under the provisions of the said Government order dated 19.5.1990 M/s. Indo Traders Corporation, respondent No. 6, through its Proprietor Sri Bal Krishna Agarwal, was appointed as Block Distributor for Super Kerosene Oil/Light Diesel Oil in respect of Block Chanewa, district Mirzapur vide order dated 24.7.1990 and was authorized to distribute kerosene oil for the said block and accordingly a

licence in Form 3-Ka under the U.P. Kerosene Oil Order, 1962, was issued in favour of respondent No. 6. While respondent No. 6 was continuing as Block Distributor as aforesaid an advertisement dated 1.10.1993 was published by the Indian Oil Corporation inviting applications for appointment of wholesale dealers by the oil company in respect of the said block Chanewa. The petitioner applied for appointment as wholesale dealer in pursuance of the said advertisement and was ultimately appointed as wholesale dealer of the oil company vide letter dated 9.2.1999. The petitioner has also been granted a licence for the said purpose under the U.P. Kerosene Oil Order, 1962.

3. On 1.12.2001 a Government order was issued whereby it was provided that the Government order dated 19.5.1990, contemplated that in the blocks where wholesale dealers have not been appointed by the oil company, the District Magistrate shall appoint a block distributor under U. P. Kerosene Oil Order, 1962. Therefore, under the Government order dated 19.5.1990 the block distributor cannot function, a whole-seller is appointed by the oil companies in respect of the block concerned. The Government order dated 1.12.2001, however, provided that even after appointment of wholesale dealer by the oil company if the District Magistrate considers it necessary to continue with the block distributor appointed by him, earlier for distribution of kerosene in the area, he may do so and the State Government has no objection to it. The aforesaid Government order dated 1.12.2001 was modified by another Government order dated 8.3.2002 wherein It was provided that such block distributors who are continuing under the Government order dated 1.12.2001 should obtain explosive licence and establish underground storage tank, before they can be permitted by the District Magistrate to continue even after appointment of wholesale dealer by the oil company.

4. The petitioner after his appointment as wholesale dealer in respect of Block Chanewa made a representation against continuation of respondent No. 6 as block distributor. A Committee was constituted. The Committee submitted its report on 23.1.2003. The District Magistrate required the District Supply Officer to take necessary action on the complaint of the petitioner. The District Supply Officer cancelled the block distributorship of M/s. Indo Traders Corporation, respondent No. 6 vide order dated 28.4.2003. Against the order of the District Magistrate dated 2.3.2003 M/s. Indo Traders Corporation filed Appeal No. 241 of 2003 before the Commissioner, Vindhyachal Division, Mirzapur. The appeal so filed by respondent No. 6 has been dismissed by the Commissioner vide order dated 7.6.2003. Thereafter the respondent No. 6 filed Writ Petition No. 26223 of 2003 challenging the order dated 28.4.2003, passed by the District Supply Officer, Mirzapur and the order dated 7.6.2003, passed by the Commissioner in appeal. The writ petition was disposed of with a direction upon the licensing authority to re-consider the claim of respondent No. 6 in accordance with the Government order dated 8.3.2003 and to pass fresh orders in accordance with law. On the basis of the aforesaid judgment of this Court the District Magistrate (licensing authority) passed the order dated 15.3.2005 rejecting the

representation of the petitioner dated 27.12.2004 and held that there was no requirement of any block distributor because of appointment of the petitioner as wholesale dealer. Against the said order of the District Magistrate, Mirzapur, dated 15.3.2005 the respondent No. 6 filed an appeal before the Commissioner, Vindhyachal Division, Mirzapur. The appeal was registered as Appeal No. 156 of 2005. Vide order dated 7.4.2005, the Commissioner delegated his power u/s 28(1) of U.P. Scheduled Commodities Distributor Order, 2004, to the Assistant Food Controller, Vindhyachal Division, Mirzapur, to hear and dispose off the appeals filed under the Public Distribution System Control Order. On 21.4.2005, an interim order was granted in the appeal so filed by respondent No. 6 staying the operation of the order of the District Magistrate dated 26.4.2003 and dated 15.3.2005. The petitioner filed writ petition against the order dated 21.4.2005, passed in appeal and was numbered as Writ Petition No. 34033 of 2005. The writ petition was disposed of by this Court by means of judgment and order dated 28.4.2005 with a direction to the Commissioner to decide the appeal.

5. The Commissioner vide order dated 5.5.2005 has allowed the appeal and has held that since respondent No. 6 has obtained explosive licence and has installed an underground tank he is entitled to continue as block distributor in terms of the Government order dated 8.3.2002, therefore the order passed by the District Magistrate dated 15.3.2005 and 26.4.2003 deserve to be set aside. It is against the order dated 5.5.2005 passed by the Commissioner in the appeal that the petitioner has filed the present writ petition.

6. On behalf of the petitioner it is contended that the District Magistrate in his order dated 15.3.2005, has recorded a specific finding that on the relevant date the date of the Government order 8.3.2002 the petitioner had not obtained any explosive licence nor he had installed the underground storage tank and, therefore, the petitioner was not entitled to continue as block distributor. The respondent No. 6 had the underground tank and had also obtained explosive licence, he fulfilled the conditions as contained in the Government order dated 8th March, 2002.

7. The petitioner submits that the crucial date for determining the right to continue as block distributor would be the date of the Government order, i.e., 8.3.2002 and on the said date the block distributor should have obtained explosive licence and should have installed underground tank.

8. Lastly, it is submitted on behalf of the petitioner that while allowing the appeal the Commissioner has not recorded any finding in respect of the issue, namely "Whether the Block Distributor was still required for distribution of kerosene oil in the rural areas after the appointment of whole-seller by the Oil Company or not".

9. On behalf of respondent No. 6 it is submitted that prior to the passing of the Government order dated 8.3.2002 there was no requirement of any underground tank being installed or an explosive licence being obtained by the block distributor and, therefore, the condition imposed under the Government order

dated 8.3.2002 has necessarily to be applied prospectively and if the block distributor obtains an explosive licence and installs an underground tank in terms of the Government order dated 8th March, 2002, he would become entitled to continue as block distributor even where a wholesale dealer has been appointed by the oil company. It is, therefore, submitted that the Commissioner has rightly held that since on the date of passing Of the impugned order dated 15.3.2005 by the District Magistrate the respondent No. 6 had already installed the underground tank and had also obtained an explosive licence, he fulfilled all the conditions of the Government order dated 8.3.2002 and was entitled to continue as such.

10. Lastly it is pointed out on behalf of respondent No. 6 that since there was no dispute with regard to distribution of kerosene oil by the respondent No. 6 in the rural areas even after appointment of the wholesale dealer by the oil company no finding was required to be recorded by the Commissioner in respect of the said issue.

11. I have heard learned Counsel for the parties and gone through the record of the writ petition.

12. From the facts as emerge from the pleadings of the parties as well as from the contentions raised on behalf of the parties it is apparent that the dispute is confined to the following issues :

(i) Whether a block distributor should have necessarily installed an underground tank and should have obtained an explosive licence on or before 8.3.2002, i.e., the date on which the Government Order was issued for being permitted to continue as block distributor or else he becomes entitled to continue as block distributor on completing the aforesaid conditions on any subsequent date?

(ii) Whether the terms of the Government order dated 1.12.2001 and 8.3.2002 are to be read together and it is necessary for the District Magistrate to record a finding/satisfaction that the block distributor is required to continue for distribution of kerosene oil in rural areas even after appointment of wholesale dealer for distribution of kerosene oil in the block?

Issue No. 1 :

13. So far as the first issue is concerned suffice it to point out that prior to issuance of Government order dated 8.3.2002, there was no requirement for the block distributor to have obtained an explosive licence or to have installed an underground tank. The aforesaid two conditions have been imposed for the first time under the Government order dated 8.3.2002. To instal underground tank or to obtain explosive licence would, therefore, take some time.

14. A reading of the Government order dated 8.3.2002 would establish that it permits a block distributor to continue provided he fulfils the aforesaid two conditions meaning thereby that the block distributor has to be granted some reasonable time to fulfil the aforesaid two conditions and then the District

Magistrate can permit the block distributor to continue as such. Since in the facts of the present case the respondent No. 6 had installed the underground tank and had obtained explosive licence he fulfilled all the requirements of the Government order dated 8.3.2002 before the date the District Magistrate has cancelled his appointment as block distributor, it cannot be said that the respondent No. 6 was not entitled to the benefits of the Government order dated 8th March, 2002. The Commissioner has correctly interpreted the Government order dated 8.3.2002 and has rightly held that the conditions imposed under the Government order dated 8.3.2002 can be complied with prospectively only. Issue No. (ii) :

15. It would be worthwhile to refer to the order passed by this Court dated 10.12.2004 wherein it was held as follows :

"From the facts brought on record, there is no dispute that appointment of wholesale dealer has already been made by appointing respondent No. 5. The question as to whether petitioner be allowed to continue as block distributor has to be considered in accordance with the Government order dated 8th March, 2002 and it was for the licensing authority to have applied its mind to relevant criteria and conditions as laid down in the Government order, namely (i) as to whether the block distributor has obtained licence from the explosive department, (ii) as to whether the block distributor established underground tank, and (iii) as to whether the block distributor is still continuing distribution of kerosene oil in the rural area."

16. This Court had required the District Magistrate to record specific finding with regard to the three issues as have been noticed hereinabove. From the record of the present case it is apparently clear that neither the District Magistrate nor the Commissioner have recorded any finding in respect of the third issue so directed by this Court.

17. The Government order dated 8.3.2002 does not supersede the Government order dated 1.12.2001. The subsequent Government order dated 8.3.2002 is in continuation of the earlier Government order dated 1.12.2001 and, therefore, both the Government orders are necessarily to be read together. A combined reading of both the Government orders would establish beyond doubt that continuation of the block distributor subsequent to the appointment of wholesale dealer by the oil company, has been made dependent upon three factors--(a) there is a requirement, to the satisfaction of the District Magistrate for continuation of the block distributor for distribution of the kerosene oil in the block even after appointment of the wholesale dealer by the oil company, (b) the block distributor has installed the underground tank, and (c) the block distributor has obtained explosive licence.

18. So far as conditions (b) and (c) are concerned the controversy does not survive any further in view of the finding recorded by the Commissioner which have been affirmed by this Court hereinabove.

19. As far as condition (a) is concerned the District Magistrate as well as the Commissioner were necessarily required to consider as to whether there is a requirement for continuance of the block distributor for distribution of the kerosene oil in the block even after appointment of the wholesale dealer by the oil company. The requirement of the block distributor to continue even after appointment of the wholesale dealer by the oil company for distribution of kerosene oil in the block is also one of the conditions precedent for continuance of the block distributor under Government orders referred to above. Normally this Court would have remanded the matter to the District Magistrate for recording a finding in respect of the said issue, however, such a course is not being adopted in the facts of the present case inasmuch as the District Magistrate who is licensing authority on earlier occasion vide order dated 28.4.2003, has held that there was no requirement of continuance of the block distributor subsequent to the appointment of wholesale dealer by the oil company. It would, therefore, be appropriate that the Commissioner may be required to record his finding on the basis of record in respect of the aforesaid issue also before respondent No. 6 can be permitted under law to continue as block distributor.

20. In such circumstances the order dated 5.5.2005, passed by the Commissioner to the extent it permits respondent no. 6 to continue as the block distributor is hereby quashed. The findings recorded by the Commissioner in respect of underground tank and explosive licence are hereby affirmed. The Commissioner is directed to record his finding on the issue as to whether in view of Government orders dated 1.12.2001 and dated 8.3.2002 and from the material on record, there is a requirement of block distributor being continued in Block Chanewa, district Mirzapur even after appointment of wholesale dealer by the oil company for distribution of kerosene oil in rural areas. The Commissioner shall decide the matter as early as possible, preferably within six weeks from the date a certified copy of this order is filed before him.

21. The writ petition stands partly allowed.