
(2008) 01 CHH CK 0018
In the Chhattisgarh High Court

D.P. Saraf

APPELLANT

Vs

State of Chhattisgarh and Another

RESPONDENT

Date of Decision : 21-01-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 3 MPHT 61 : (2008) 2 MPJR 38

Hon'ble Judges : Dhirendra Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dhirendra Mishra, J.—Heard.

2. The petitioner has filed this petition under Article 226 of Constitution of India against the respondents for the following reliefs:

(i) that the respondents should comply with the judgment and decree dated 25th August, 2007 delivered by the learned Additional District Judge, Bilaspur in Civil Appeal No. 11-A/05 and act in accordance with law.

(ii) that the respondent No. 2 should not issue licence to the owner of the petrol pump being operated over the land of the petitioner for any transferred place.

(iii) that Contempt of Court proceedings be initiated against the respondents, penalty be imposed on the respondents and the same be awarded to the petitioner.

3. Grievance of the petitioner is that No Objection Certificate issued by the respondents for operating petrol pump has been declared void by the judgment dated 25th August, 2007 by the learned Additional District Judge, Bilaspur. He personally apprised about the above judgment to respondent No. 1 vide application dated 7-9-2007 (Annexure P-2) and prayed to close the petrol pump as per Rules 153 and 154 of Petroleum Rules, 1976. However, no action has been taken on his application so far. He also addressed a letter dated 14-9-2007 to

respondent No. 2 and prayed for cancellation of licence No. M.P. 196 (Old No. M.P. 628) with immediate effect. However, the respondents have initiated proceedings for issuance of licence for operating petrol pump from some other place, which is contrary to law.

4. It was contended that Rule 153 of Petroleum Rules, 1976 specifically provides that every licence granted under these Rules shall stand cancelled, if the licensee ceases to have any right to the site for storing petroleum and if the No Objection Certificate is cancelled by the District Authority or the State Government in accordance with Sub-rule (1) of Rule 151. Since the Competent Court has already passed a decree of declaration in favour of the petitioner against the respondents declaring renewal of the No Objection Certificate as illegal and void as the same was accorded without consent of the plaintiff/petitioner and the defendant/respondent No. 1 has no legal right to continue it, therefore, in view of Section 153(1) (i), (ii) the licence stands cancelled.

5. Reliance is placed on the order passed by the Hon'ble Supreme Court in the matter of Yogesh Kumar and others Vs. M/s. Bharat Petroleum Corpn. Ltd. and others, , and the judgment delivered in the matter of C. Albert Morris v. K. Chandrasekaran and Ors. reported in 2005(3) SCCD 1622.

6. I have heard the petitioner in person and have gone through the petition and the documents annexed therewith.

7. Rule 153 of the Petroleum Rules, 1976 reads as under:

153. Suspension and cancellation of licence.-- (1) Every licence granted under these rules shall:

(i) stand cancelled, if the licensee ceases to have any right to the site for storing petroleum;

(ii) stand cancelled, if the No Objection Certificate is cancelled by the District Authority or the State Government in accordance with Sub-rule (1) of Rule 151;

(iii) be liable to be suspended or cancelled by an order of the Licensing Authority for any contravention of the Act or of any rule thereunder or of any condition contained in such licence, or by order of the Central Government if it is satisfied that there are sufficient grounds for doing so.

Provided that:

(a) before suspending or cancelling a licence under this rule, the holder of the licence shall be given an opportunity of being heard;

(b) the maximum period of suspension shall not exceed three months; and

(c) the suspension of a licence shall not debar the holder of the licence from applying for its renewal in accordance with the provisions of Rule 149.

(2) Notwithstanding anything contained in Sub-rule (1), an opportunity of being

heard may not be given to the holder of a licence before his licence is suspended or cancelled in cases:

(a) where the licence is suspended by a Licencing Authority as an interim measure for violation of any of the provisions of the Act or these Rules, or of any conditions contained in such licence and in his opinion such violation is likely to cause imminent danger to the public:

Provided that where a licence is so suspended, the Licensing Authority shall give the holder of the licence an opportunity of being heard before the order of suspension is confirmed; or

(b) where the licence is suspended or cancelled by the Central Government, if that Government considers that in the public interest or in the interest of the security of the State such opportunity, should not be given.

(3) A Licensing Authority or the Central Government suspending or cancelling a licence under Sub-rule (1), shall record its reasons for so doing in writing.

8. The instant petition has been filed by the petitioner on the basis of judgment dated 25th August, 2007 passed by learned Additional District Judge, Bilaspur in Civil Appeal No. 11-A/05 whereby a decree of declaration has been passed in favour of the petitioner to the effect that "it is declared that renewal of the No Objection Certificate for operating petrol pump over the land of the plaintiff/petitioner is illegal and void and the defendant/respondent No. 1 has no legal right to continue the same". From perusal of the above judgment (Annexure P-1), application to the Collector, Bilaspur (Annexure P-2) as also application to the respondent No. 2 (Annexure P-3), it is evident that the petitioner has not arrayed the licensee of the petrol pump, which is operating the pump from his land as a party. The decree of declaration has been obtained against the State through Collector, Bilaspur. The authority competent to cancel the licence of the petrol pump being operated from the land of the petitioner, lies with the Licensing Authority, i.e., respondent No. 2. The licence can be cancelled for the reasons mentioned in Rule 153(1) of the Petroleum Rules, 1976. However, before suspending or cancelling the licence under the said Rules, an opportunity of hearing is to be given to the holder of the licence except under the circumstances mentioned in Sub-rule (2) of Rule 153. In the present case, from the pleadings in the petition, the circumstances enumerated under Sub-rule (2) of Rule 153 do not exist.

9. In the matters of Yogesh Kumar and Ors. (supra), No Objection Certificate granted for operating the petrol pump was cancelled by the District Magistrate, which was subsequently set aside by the Division Bench of the High Court with an observation that No Objection Certificate can be cancelled only when the licensee ceases to have any right to use the site for storing petrol. However, the Hon'ble Supreme Court dismissed the SLP preferred by owner of the petrol pump with an observation that from a plain reading of Rule 151 of Petroleum Rules, 1976 it is clear that a No Objection Certificate granted under Rule 144 can

be cancelled wherever the licensee ceases to have any right to use the site for storing petrol and that right could be lost by a licensee either by his tenancy or right to the use of the site coming to an end or for any other reason whereby, in law, the right to use the site for storing petrol ceases.

10. In the matter of C. Albert Morris (*supra*) the petitioner arraying the dealer of the petroleum product and his tenant as respondents prayed for cancellation of licence under Rule 153(1) of Petroleum Rules, 1976 on the ground that he has lost right to the site. The objection of the dealer-respondent was negated by Their Lordships with a finding that unless the person seeking licence is in a position to establish right to the site, he would not be entitled to hold or have licence renewed.

11. In the instant case, as already observed in the foregoing paragraphs, the petitioner has not arrayed the licensee, owner of the petrol pump as respondent. From perusal of the decree as also the applications submitted by the petitioner before the respondent Nos. 1 and 2, it is clear that the licensee/dealer of the petrol pump was not made a party and without arraying the licensee as party, an attempt has been made by the petitioner to get his licence cancelled whereas proviso to Sub-rule (1) of Rule 153 of Petroleum Rules, 1976 clearly stipulates that before suspending or cancelling the licence under these Rules, holder of the licence shall be given an opportunity of being heard. Thus, the petitioner by cleverly drafting this petition has tried to seek a relief against the owner of the petrol pump behind his back without arraying him as a party.

12. In the result, for the aforesaid reasons the instant petition being malafide and vexatious deserves to be dismissed with cost and is accordingly, dismissed with a cost of Rs. 5,000/- payable to the CG. High Court Legal Aid Committee, Bilaspur.