
(2003) 04 DEL CK 0070
In the Delhi High Court
Case No : CW 7858 of 2001

Ghanshyam

APPELLANT

Vs

Lt. Governor and Others

RESPONDENT

Date of Decision : 30-04-2003

Acts Referred:

Citation : (2003) 04 DEL CK 0070

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : Sanjay Karol and Shiveta Kitchloo, for the Appellant; Aditya Madan, for the Respondent

Judgement

Badar Durrez Ahmed, J.—Rule. The petition is taken up for final hearing with the consent of the parties.

2. The petitioner had a Kerosene Oil Depot originally at Veena Enclave and subsequently at Nangloi Extension-II, Nangloi, under Circle No. 25 which was cancelled by the order dated 7.4.1997 passed by the Commissioner, Food and Supplies.

3. The petitioner preferred an appeal before the Financial Commissioner who by an order dated 3.7.97 upheld the order of cancellation.

Thereafter, the petitioner filed a writ petition being CW. No. 1032/98. As would be apparent from the order dated 26.3.98 passed in the said writ petition, the petitioner submitted that he would file a review against the order passed by the Financial Commissioner and accordingly, requested for withdrawal of the petition. This court permitted such withdrawal and dismissed the writ petition as withdrawn. Thereafter, the petitioner moved an application being CM. No. 8227/98 in the disposed of writ petition No. 1032/98 and this court vide order dated 6.10.98 disposed of the application with the direction that the bar of limitation would not come in the way of the Financial Commissioner in considering the review petition filed by the petitioner under the second proviso to

Clause 8(5) of the Delhi Kerosene Oil (Price and export) Control Order 1962 and the original order dated 26.3.98 stood modified to that extent. Thereafter, the petitioner filed a review before the Financial Commissioner. The review application was disposed of by an order dated 11.12.98 whereby the review was dismissed. This is the order which is impugned in the present writ petition.

4. However, the petitioner did not come to this court straight away and filed a representation before the Lieutenant Governor . The representation was also disposed of by the Lieutenant Governor by an order dated 18th July, 2001 wherein he refused to interfere with the order of cancellation of the petitioner's kerosene oil depot passed by the Commissioner, Food and Supplies and confirmed in appeal and review by the Financial Commissioner.

5. The learned counsel for the petitioner drew my attention to the notes in the file of the office of the Commissioner of Food and Supplies K-Block, ITO, Vikas Bhawan, copy whereby is annexed as Annexure P-VI at page 106 to 111 of the paper book. Upon reading the noting in the file of the respondent it is apparent that the petitioner was granted the license for kerosene oil depot on 31.1.96 and that 1014 food cards were linked with the petitioner's kerosene oil depot. It is relevant to note that the minimum requirement for a kerosene oil depot was that it should have at least 1000 food cards. Thereafter on 27.2.96 i.e. 27 days after the allotment made to the petitioner, an allotment was made to one M/s Chander Bhan for an additional kerosene oil depot in the same area i.e. Veena Enclave. Out of the 1014 food cards which were linked with the petitioner, 550 cards were taken away from the petitioner and linked with the said M/s Chander Bhan Oil Kerosene Depot. Thus, only 654 cards were left with the petitioner because of this act on the part of the respondent. As the petitioner was left with a smaller number of food cards than the minimum prescribed, the respondents allowed him to shift his business premises from Veena Enclave to the said Nangloi area in July, 1996. In Nangloi, the petitioner had 1384 food cards linked with his kerosene oil depot.

6. From the above, it is apparent that at the time when the license was granted to the petitioner on 31.1.96, he had more than a thousand food cards and thereby complied with the minimum requirement. And, when he shifted to the new area i.e. Nangloi, he had 1384 food cards which again was more than the minimum requirement. It is in this context that the learned counsel for the petitioner has drawn my attention to the order of the Commissioner, Food and Supplies dated 7th April, 1997 whereby the petitioner's kerosene oil depot was cancelled. Learned counsel submitted that the only ground on which the depot was cancelled was indicated in the following paragraphs:

"I have carefully gone through the contents of the appeal filed by the appellant and the pleadings made by the learned counsel for the appellant during the course of arguments as well as the entire records of the case. I have also heard both the parties, namely, M/s Chander Bhan K. Oil Depot and M/s. Nitin K. Oil Depot. It is seen that M/s Nitin K. Oil Depot Lic. No. 4027/96 has also shifted

earlier business premises from 4/40-A, Veena Enclave, Nangloi to plot No. 129, Khasra No. 41/15, Nangloi Extension-II, i.e. out of notified area vide order No. AC(NW/96/1502-1504 on 15.7.96 on the ground of insufficient food cards in the said notified area. Thus it is obvious that adequate food cards were not available at the time of notifying the vacancy in question. It is surprising as to why two authorisations to run K. Oil Depots were issued. As such, the department has not kept in mind the norms/yardstick of the food cards before notifying the vacancy. After considering the facts and circumstances of the case and the contents of the order dated 8.10.96 passed by the Hon"ble High Court, I am of the opinion that the authorisations to run K. Oil Depot have not been issued on the basis of merit and have also not been processed as per the guidelines laid down by the department for grant of authorisations for K. Oil Depot. I also observe that quite lines the criteria/standard norms adopted for grant of K. Oil Depot have not been adhered to in the instant case. In the larger interest of justice and equity, it would be appropriate if the authorisations already issued are cancelled."

Upon reading the aforesaid extract from the order of cancellation, it is apparent that the purported ground on which the petitioner's kerosene oil depot was cancelled was that adequate food cards were not available at the time of notifying the vacancy in question. It must be remembered that when the petitioner was granted the license on 31st January there were adequate number of food cards inasmuch as the petitioner had 1014 food cards. It is the notifying of the subsequent vacancy which was filled in by one Mr. Chander Bhan that could have been questioned, if at all.

7. I am not entering into the propriety of the decision in respect of the allotment to M/s Chander Bhan as that is not a issue here. However, it is clear that license to the petitioner i.e. M/s Nitin Kerosene Oil Depot bearing license No. 4027/96 was prior in time and adequate number of food cards were connected with it. Learned counsel for the petitioner also pointed out to the noting in the respondent's file referred to above and particularly to the following passage:

"From the above, it is clear that M/s Nitin KOD being the only one candidate selected initially had suffered. In order to give him justice, we may place the matter before the Hon"ble LG, who is the competent authority under the Control Order in such a situation."

From this noting, it is clear that even in the respondent's point of view, the petitioner had suffered for no fault of his. The respondents have also produced the original record and the nothings as mentioned in the annexures to the writ petition compared with the nothings in the original file.

8. In view of the forgoing facts and circumstances, it is apparent that the petitioner has suffered for no fault of his and the purported grounds on the basis of which his allotment of kerosene oil depot had been cancelled are not borne out by the records and the admitted facts. The order of cancellation is, Therefore, ex facie, arbitrary and opposed to reasons.

In these circumstances, the impugned order dated 11.12.98 as well as the Lieutenant Governor 's decision dated 18th July, 2001 are set aside and the respondents are directed to restore the kerosene oil depot of the petitioner at the said Nangloi area.

9. The Learned Counsel for the respondent however, submits that as on date there may not be any notified vacancy in Circle No. 25, Nangloi. He, however, admitted that there are three kerosene oil depots functioning in this area being M/s. Durga Kerosene Oil Depot, Shastri Kerosene Oil Depot and M/s. Bansal Kerosene Oil Depot and that each of them has blue cards far in excess of the minimum cards required (which has now been reduced from 1000 to 850). In these circumstances, it may be possible that the petitioner be accommodated by redistribution of the blue cards of the existing kerosene oil depots if it causes no prejudice to the existing kerosene oil depots. This is only a suggestion which was expressed at the bar in the course of arguments.

10. Be that as it may, as indicated above the respondents have to restore the kerosene oil depot of the petitioner in the said Nangloi area as expeditiously as possible.

There shall be no order as to costs.