
(2011) 01 AHC CK 0150
In the Allahabad High Court
Case No : Writ C. No. 1033 of 2011

Guddi Devi

APPELLANT

Vs

State of U.P.and others

RESPONDENT

Date of Decision : 17-01-2011

Acts Referred:

Citation : (2011) 01 AHC CK 0150

Hon'ble Judges : Vineet Saran, J and Shashi Kant Gupta, J

Final Decision : Allowed

Judgement

Vineet Saran and Shashi Kant Gupta, JJ.—Heard learned counsel for the petitioner as well as learned Standing counsel appears for the respondents.

2. Learned Standing counsel was granted time to obtain instructions which he states that he has received. He also states that the record in the case is also available with him.

3. With the consent of the parties, this petition is disposed of at this stage.

4. The petitioner is a Petty Diesel Oil Licensee. His license is for a particular area wherein he has to establish his business premises. Since the shop was in a rented accommodation, the petitioner was required to vacate the same. As such, he applied for change of business premises within the same area of his operation. However, the said application was rejected by the respondent no.2 on 14.9.2010. Hence the present petition.

5. The main ground for rejection of the application is that by Government Order dated 23.12.2005, a licensee cannot be permitted to change his area of operation.

6. The submission of learned counsel for the petitioner is that the area of operation of the petitioner would remain the same and only the business premises within the same area is to be changed. Because of peculiar circumstances, the petitioner has to vacate the rented accommodation from

where he was running his business. The said Government Order dated 23.12.2005 came up for consideration before the Division Bench of this Court in the case of "Nasim Ahmad Vs. State of U.P., 2010(3) ADJ 376". The relevant paragraph nos.11, 12 & 13 of the said judgment are quoted below:

11. The Government Order dated 23/12/2005, has to be read in the light of the Order, 1981. A perusal of the Government Order dated 23/12/2005, indicates that what was prohibited by the State Government is that the Petty Diesel Oil Licensees on the pretext of change of premises cannot be permitted to change the places so as to defeat the procedure for new appointment. The Government Order dated 23/12/2005, in fact prohibited such change of place which amounts to opening of shop at a place where new business was required to be taken. For example, if a license has been granted for A locality, he cannot be permitted to change the premises to locality B. Change of premises may be necessitated due to several unavoidable circumstances for example, vacation of shop, shop itself may be damaged by natural calamity or there may be other reasons. Permission is required from the licensing authority, for satisfying the licensing authority that premises is fit for running the business in question.

12. In the present case, the premises which has now been obtained is across the road and has been necessitated by the eviction of the shop. Such contingency cannot be covered by the Government Order dated 23/12/2005. However, the licensing authority can refuse the permission if the shop is being shifted to a different locality or being shifted at a place where new licence may be required for running the business. Government Order dated 23/12/2005, can be saved only by the above interpretation, otherwise it may contravene the Order, 1981 Clause 4 as quoted above. The subsequent letter dated 7/9/2009 is only a reiteration of Government Order dated 23/12/2005, and it cannot be said that there is a complete prohibition in the Government Order dated 23/12/2005 for changing the boundaries of the premises.

13. In view of the aforesaid, it is held that the District Supply Officer has to apply his mind for the change in the premises sought by a licensee and has to take a decision. We make it clear that cases where new licence is required or where the locality itself is being changed cannot be permitted in view of the Government Order dated 23/12/2005, but in other cases each case has to be considered on its own facts.

7. The case of the petitioner is also of similar nature, the petitioner has shifted to another business premises within the same area of operation in the same locality. The impugned order dated 14.9.2010 which is purported to have been passed on the basis of the Government Order dated 23.12.2005 is wholly unjustified and has no bearing whatsoever on the matter in hand. The said Government Order dated 23.12.2005 is required to be interpreted in a realistic manner.

8. For the reasons as indicated hereinabove, the order dated 14.9.2010 passed

by the respondent no.2 deserves to be quashed and is accordingly set aside.

9. The writ petition stands allowed.

10. The respondent no.2 is directed to pass afresh order in accordance with law and keeping in view of the observations made hereinabove, within 15 days from the date of filing of the certified copy of this order before him.