

(2008) 05 AHC CK 0035
In the Allahabad High Court
Case No : C.M.W.P. No. 19062 of 2008

Indra Oil Company and Another

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 01-05-2008

Acts Referred:

Citation : (2008) 3 AWC 2721

Hon'ble Judges : Sudhir Agarwal, J;Anjani Kumar, J

Bench : Division Bench

Advocate : M.K. Gupta, for the Appellant;

Final Decision : Allowed

Judgement

Anjani Kumar and Sudhir Agarwal, JJ.—Heard Sri M. K. Gupta, learned Counsel for the Petitioners and learned standing counsel for the Respondents.

2. Despite time having been granted to the Respondents vide order dated 11.4.2008 neither the Respondents have filed any counter-affidavit nor the learned standing counsel was able to inform as to whether the Respondents have passed final order in the matter as permitted by this Court vide order dated 11.4.2008.

3. Learned Counsel for the Petitioners contended that in view of Clause 11 of the U. P. Kerosene Control Order, 1962 (hereinafter referred to as the "1962 Order") the order of suspension cannot be continued beyond a period of two weeks. In the present case since the order of suspension was passed on 17.3.2008 and more than one and half months has already elapsed, therefore, he contended that by operation of law the impugned order of suspension has ceased and, therefore, the Respondents pursuant thereto cannot interfere with the functioning of the Petitioner as a kerosene dealer treating as if the licence of Petitioners is continuing as suspended. He also made a statement at the Bar that despite of this Court's order dated 11.4.2008 which was communicated to the Respondents, no final order has been passed by them till date.

4. Since the submission advanced by learned Counsel for the Petitioners is purely legal as to the effect of second proviso of Clause 11 of 1962 Order, therefore, as agreed by learned Counsel for the parties this writ petition has been heard finally and is being decided under the Rules of the Court at this stage.

Clause 11 of 1962 order reads as under:

11. Forfeiture of security, suspension and cancellation of and refusal to renew licence.-The licensing authority may, for reasons to be recorded in writing, forfeit the security either in whole or in part, suspend or cancel any licence or refuse to renew a licence if it is satisfied that the licensee has contravened any provisions of this Order or the conditions of the licence or any direction issued thereunder:

Provided that the licensee shall be given a reasonable opportunity of submitting his explanation before forfeiture of security either in whole or in part or before a licence is cancelled or its renewal is refused or its suspended otherwise than by way of suspension pending inquiry:

Provided further that no order of suspension pending inquiry shall extend beyond a period of two weeks:

Provided also that it shall not be necessary to give an opportunity in respect of an alleged contravention which has led to the conviction of the licensee.

5. A perusal of Clause 11 second proviso makes it clear that no order of suspension pending inquiry shall extend beyond a period of two weeks. From a bare perusal of impugned order of suspension it is evident that the Petitioners were required to submit their reply pending inquiry and their licence was suspended by the licensing authority on 17.3.2008. The Petitioners claim to have submitted their reply on 24.3.2008, i.e., within one week from the date of issuance of order of suspension but no final order has been passed and admittedly more than one and half month has already elapsed.

6. In view of second proviso to Clause 11 we are of the view that the impugned order of suspension cannot operate after two weeks and by operation of law cease to have any legal force whereunder the Petitioners can be treated to be a validly suspended licensee under the provisions of 1962 Order.

7. We, therefore, allow this writ petition and hold that the impugned order of suspension shall be treated to be inoperative after expiry of two weeks from the date of its issuance and the Respondent-licensing authority shall not restrain the Petitioners from functioning as a kerosene dealer under 1962 Order merely on the basis of impugned suspension order dated 17.3.2008. However, this order shall not preclude the competent authority from passing a final order in the matter. Since the matter is already long pending for one and half months, we direct the competent authority to pass final order in the matter within three weeks from the date of presentation of certified copy of this order before him. There shall be no order as to costs.