
(2008) 06 OHC CK 0031
In the Orissa High Court
Case No : Writ Petition (C) No. 16204 of 2007

Jasobanta Seth

APPELLANT

Vs

Collector-cum-District

RESPONDENT

Date of Decision : 18-06-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 226

Citation : (2008) CLT 1274 (Suppl CrI) : (2008) 2 OLR 699 Supp : (2008) OLR 1274 (Suppl CrI)

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.M. Das, J.—Heard Mr. K.R. Mohapatra, learned Counsel for the Petitioner and the learned Counsel for the State.

2. The Petitioner on being appointed as a Dealer of Retail Outlet of Bharat Petroleum Corporation is running a Petrol Filling Station in the name of Samaleswari Fuel Station at Thuapalli. An application was filed by the Bharat Petroleum Corporation on behalf of the Petitioner for grant of Diesel Selling Licence, under Annexure-4 to the writ petition. The Civil Supplies Officer, Bargarh in his letter dated 27.9.2006 vide Annexure-5 intimated the Petitioner that the Collector refused to grant such licence on the ground that the father of the Petitioner, namely, Gopal Seth, is acting as Sub-Wholesaler of S.K. Oil under Attabira P.S, of Bargarh District and as per the provisions laid down in the Government letter No. 4525 dated 24.2.2005, no diesel selling licence for High Speed Diesel can be granted in favour of the Petitioner. Being aggrieved, the Petitioner has approached this Court under Article 226 of the Constitution for appropriate relief.

3. Mr. Mohapatra, learned Counsel for the Petitioner submits that in the counter affidavit filed by the State, the relevant portion of the Government letter, on the

basis of which, licence was refused to the Petitioner, has been quoted. Mr. Mohapatra also draws the attention of the Court to paragraph-12 of the counter affidavit, wherein the relevant portion of the letter dated 24.2.2005 has been quoted. The said portion of the Government's letter reads as follows:

XXX XXX XXX

Persons who themselves or whose family members and/or close relatives have interest in the business of S.K. Oil whether P.D.S. or non-P.D.S. whether as Wholesaler/Sub-wholesaler/retailer and/or in the business of petroleum product like motor spirit or high speed diesel or the ownership of the commercial transport vehicles like bus, truck, mini-truck and/or a trawler, fishing boat etc. should not be granted licence as Sub-Wholesaler/Wholesaler/retailer for the S.K.O.

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Mr. Mohapatra further submits that grant of licence for selling High Speed Diesel is granted under the provisions of the Orissa High Speed Diesel (Dealers' Licensing) Order, 1979.

On considering the letter of the Government, as quoted in the counter affidavit, I do not find anything there, which prevents the licensing authority from granting High Speed Diesel Selling Licence to the Applicant. The said letter is confined to appointment of Sub-wholesaler/Wholesaler/Retailer in case of S.K. Oil and not High Speed Diesel.

In view of the above, the order of the Collector, as communicated to the Petitioner by the Civil Supplies Officer, vide Annexure-5, is misconceived and cannot be sustained. This Court, accordingly, quashes the letter under Annexure-5 by which the Collector, Bargarh refused to grant High Speed Diesel Selling Licence to the Petitioner. The matter is remitted back to the Collector, Bargarh opp. Party No. 2 to take a fresh decision on the application filed by the Bharat Petroleum Corporation on behalf of the Petitioner for grant of High Speed Diesel Selling Licence within a period of three weeks from the date of production of the certified paper of this order along with copy of the writ petition, counter affidavit and the further affidavit filed by the parties, along with all annexures before him, by the Petitioner. While disposing of the same, he shall deal with the application in accordance with the provisions of the Orissa High Speed Diesel (Dealer's Licensing) Order, 1979.

The writ petition is accordingly allowed.

Urgent certified copy of this order shall be granted as per rules.