
(2010) 05 AHC CK 0371
In the Allahabad High Court
Case No : C.M.W.P. No. 4044 of 2010

Mishra Brothers

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-05-2010

Acts Referred:

Uttar Pradesh Kerosene Oil Control Order, 1962 — Rule 12

Citation : (2010) 5 AWC 4728

Hon'ble Judges : Virendra Singh, J; Ashok Bhushan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Virendra Singh, J.—By way of this writ petition, the petitioner sought that a writ, order or direction in the nature of certiorari quashing the order dated 22.1.2010, passed by respondent No. 3 (Annexure-8 to this writ petition) and a writ, order or direction in the nature of mandamus restraining the respondents from issuing fresh licence to the respondent No. 4 as Block Distributor of Kerosene Oil of Block Abholi, district Sant Ravi Das Nagar be issued.

2. Heard Sri S. K. Mishra and Sri Ved Bhushan Pandey, learned Counsel appearing on behalf of petitioner. Sri U. N. Sharma, learned senior advocate appearing for the respondent No. 4 M/s. Madhav Prasad Shitaram, learned standing counsel on behalf of respondent Nos. 1 to 3.

3. In the year 1997, the petitioner was appointed as distributor of kerosene oil for block Suriyawan. A new block Abholi was created in which major portion of Block Suriyawan was included. Petitioner's case is that petitioner working as block distributor of kerosene since 1997 incurred heavy expenses on establishment and constructing the storage and underground tank. On creation of new block Abholi, the District Magistrate Sant Ravi Das Nagar initiated proceedings for appointment of distributorship of kerosene oil in the said new block Abholi. The petitioner had also applied for obtaining the distribution ship of

block Abholi but the District Magistrate without applying guidelines as mentioned in the Government order dated 19.5.1990 issued the licence in favour of respondent No. 4 on 2.1.2004. Against that licence, the petitioner submitted objection/representations to the District Magistrate as well as to the State Government. The State Government as per order dated 23.2.2005 found the procedure for allotment of distributorship faulty and ordered to cancel the licence granted to respondent No. 4 and to get the offer afresh. Consequently, the District Magistrate on 10.3.2005 cancelled his earlier order dated 2.1.2004, passed in favour of respondent No. 4. Against the order dated 23.2.2005, passed by the State Government, the respondent No. 4 filed Civil Misc. Writ Petition No. 257 of 2006. This Court vide order dated 26.11.2009, passed in the aforesaid writ petition allowed the writ petition thereby quashing the order dated 23.2.2005, passed by State Government and keeping open to the licensing authority to proceed in accordance with law. Thereafter, the District Magistrate proceeded afresh for the allotment of distributorship. Petitioner also submitted his application on 22.12.2009 in respect of his claim. The District Magistrate after hearing of both the parties cancelled the earlier allotment order dated 2.1.2004 vide its order dated 24.12.2009. The petitioner submitted that the respondent No. 4 did not file any appeal before the appellate authority as is prescribed under Rule 12 of U.P. Kerosene Oil Control Order, 1962. Hence, the order dated 24.12.2009, passed by the District Magistrate became final.

4. It is further submitted that the District Magistrate in an ex parte manner further passed an order on 6.1.2010 thereby suspending his earlier order passed on 24.12.2009 without issuing any notice or affording opportunity of hearing to the petitioner and further on 22.1.2010 the District Magistrate again without affording any opportunity to the petitioner cancelled the order dated 24.12.2009 and restored the licence granted on 2.1.2004 to respondent No. 4 arbitrarily and illegally.

5. On the strength of counter-affidavit filed on behalf of respondent, it is contended that new block Abholi was created in the year 2003 for which appointment of distributor of kerosene oil was communicated to the whole sale dealers already working in the district as per Clause 3.3 of the Government order dated 19.5. 1990. In pursuance of it, three applications were received, exercising the power under Clause 3.4 of the Government order the District Magistrate appointed respondent No. 4 as Kerosene Oil Distributor for newly constituted block Abholi thereby issuing the licence to him on 2.1.2004. The petitioner having rivalry with respondent No. 4 had made complaint against him and in pursuance of such complaint, the State Government vide its order dated 23.2.2005 had directed the District Magistrate to cancel the licence granted in favour of respondent No. 4 and the District Magistrate vide order dated 10.3.2005 had recalled his order dated 2.1.2004, against which the Civil Misc. Writ Petition was preferred by respondent No. 4, in which the order dated 10.3.2005, passed by District Magistrate and order dated 23.2.2005, passed by State Government were challenged. This Court passed an interim order and

thereafter by final order dated 26.11.2009 had allowed the writ petition but instead of compliance of order of this Court the District Magistrate vide order dated 24.12.2009 cancelled the appointment of respondent No. 4 as block distributor on the same grounds on which basis the District Magistrate had earlier cancelled the appointment vide order dated 10.3.2005 which was set aside by this Court.

6. Aggrieved by the order dated 24.12.2009, passed by the District Magistrate, the respondent No. 4 again submitted the representation dated 2.1.2010 to District Magistrate, who after perusing the record suspended his earlier order dated 24.12.2009 and an enquiry was initiated in the matter constituting a Committee of District Supply Officer and the District Government Advocate. Finally on the report of Committee, District Magistrate vide order dated 22.1.2010 issued licence in favour of respondent No. 4. thereby setting aside his earlier order dated 24.12.2009 by which the appointment of respondent No. 4 was cancelled. It is also submitted on behalf of respondents that since the petitioner was already working as distributor of kerosene oil at block level, therefore, his appointment for newly constituted block Abholi was not taken into account and his application was rejected by the District Magistrate.

7. It is further contended on behalf of respondents that there was no necessity for providing an opportunity of hearing to the petitioner as the impugned order dated 22.1.2010 is very much perfect, just and legal and is based on report of the committee as well as other facts available on record. The U.P. Kerosene Oil Control Order, 1962 provides the provision for filing an appeal before Divisional Commissioner against the order of cancellation and renewal of licence and not against the order of any appointment. The impugned order has been passed by the District Magistrate in compliance of the order of this Court passed on 26.11.2009 in Writ Petition No. 257 of 2006 and therefore the said order cannot be said illegal order in any manner.

8. In this regard the Government Order No. 1646/29.7.33/K 090/1015/30.5.90 dated 19.5.1990 shows that there shall be a separate block distributor for kerosene to distribute the kerosene to the retailers and shopkeepers of fair price shops. The preference shall be given to the wholesale dealers working in the district for appointment of the distributor of block level. The District Magistrate shall consider the offers of kerosene wholesale dealers in the district for the distributorship at Block level. If more than one offer are received, the District Magistrate shall select one of them on his own discretion. In this regard the District Magistrate may seek the help of a selection committee constituted by him in this regard.

9. With regard to the aforesaid Government order, the facts of this case reveal that thereby following the procedure as is mentioned in the aforesaid Government order, the respondent No. 4 was appointed as distributor of kerosene oil in Block Abholi, Sant Ravi Das Nagar (Bhadoli) on 2.1.2004. Certain complaints were made to the Government against appointment of respondent

No. 4 and the Government without referring those complaints to the District Magistrate/Licensing Authority directed itself to the District Magistrate to cancel the licence of the distributorship of kerosene oil granted to respondent No. 4. The District Magistrate for the selection of the distributorship as per procedure laid down in the order, has certain discretion too, therefore, the licence granted in favour of respondent No. 4 cannot be said contrary to the Government order in this regard. Not only this, the report revealed too that against the appointment of respondent No. 4, none of the objection was raised by the petitioner rather the wholesale dealer of kerosene oil, namely, M/s. Bikaner Petroleum Agency at Bhadhohi and M/s. Jagjiwan Patel had submitted their objections on which basis the Government got an enquiry made through the Assistant Food Commissioner, Varanasi in which it was reported that no transparency was made by the District Magistrate in the selection of respondent No. 4 and on that basis the State Government had directed to cancel the selection of respondent No. 4, which was found erroneous by this Court in the writ petition filed by respondent No. 4. Therefore, the District Magistrate committed no error thereby appointing the respondent No. 4 as Block Distributor. More so, since the petitioner was already working as distributor of kerosene oil at Block level and since the respondent No. 4 was not appointed as Block distributor of kerosene oil of any of the block, therefore, the application of the petitioner for appointment of kerosene oil as Block Level Distributorship for newly constituted block Abholi was not liable to be considered.

10. In so far as contention of the learned Counsel for the petitioner that the order dated 22.1.2010, passed by the District Magistrate recalling his earlier order is without jurisdiction as it is passed without providing an opportunity of hearing to the petitioner. It is to be noted that earlier order dated 24.12.2009 was passed by the District Magistrate without hearing respondent No. 4 whereby the licence issued to respondent No. 4 was cancelled. Further, the District Magistrate had cancelled the appointment order of respondent No. 4 under wrong interpretation of the order of this Court on the same grounds which were found erroneous by this Court. The impugned order for appointment of kerosene distributorship at Block level in favour of respondent No. 4 as per Government order guideline based on the recommendations of the committee constituted in this regard deserves not to be interfered in this writ petition.

11. So far as the question of Clauses 11 and 12 of U.P. Kerosene Control Order, 1962 regarding the cancellation order and filing of the appeal before the Divisional Commissioner is concerned, we have gone through the aforesaid provisions which are quoted below:

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

therein.

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

Provided further that the 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 alleged contravention which has led to the conviction of the licensee.

12. Appeal.-(i) Any person, aggrieved by the cancellation of his licence or by the refusal to renew the same, may within thirty days of the order of cancellation or refusal being communicated to him, prefer an appeal to the concerned Divisional Commissioner or to such other officer as nominated by the State Government in this behalf.

(ii) State Government, may as a special case transfer to itself an appeal filed under Sub-clause (i) above and dispose it of.

(iii) Appeal preferred before the State Government prior to the commencement of this order, may be transferred by the State Government for disposal of the Divisional Commissioner concerned.

Aforesaid provisions, no doubt provide the powers of suspension and cancellation of the licence, which are appealable by the aggrieved persons before the Divisional Commissioner, but looking into this fact that the impugned order in this case in hand is pertaining to appointment of distributorship in favour of respondent No. 4, which is nowhere appealable in the aforesaid Control Order. Therefore, respondent No. 4 was not under obligation to file an appeal and the contentions in this regard raised on behalf of the petitioner have no force, since the cancellation order dated 24.12.2009 was suspended by the District Magistrate himself on the representation of respondent No. 4 and we find no merit in this contention too of the petitioner.

12. Hence, we find no merit in this writ petition, which is liable to be dismissed and is hereby dismissed accordingly.