
(2013) 05 AHC CK 0143

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 25969 of 2013

M/s. Agrawal Trading Agency

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 14-05-2013

Acts Referred:

Citation : (2013) 6 ADJ 464 : (2013) 99 ALR 623 : (2014) 3 AWC 2856

Hon'ble Judges : Surya Prakash Kesarwani, J; Ashok Bhushan, J

Bench : Division Bench

Advocate : Ashok Khare and R.K Tripathi, for the Appellant;

Final Decision : Disposed Of

Judgement

1. Supplementary affidavit filed today is taken on record. Heard Shri Ashok Khare, learned Senior Advocate assisted by Shri R.K. Tripathi, for the petitioner and the learned Standing Counsel.

2. By this petition, the petitioner has prayed for quashing the order dated 30.4.2013 passed by the District Supply Officer suspending the license of the petitioner's Kerosene Oil. By the said order the District Supply Officer also directed the petitioner to submit his reply alongwith evidence within one week.

3. Learned counsel for the petitioner submitted that the suspension of the petitioner's license of kerosene oil was suspension pending inquiry and in accordance with 2nd proviso of Clause 11 of the U.P. Kerosene Control Order, 1962 (hereinafter called the "Order 1962") the said suspension order has come to an end. He further submits that according to first proviso to Rule 11 of the Order 1962, before suspending the license, an opportunity of submitting an explanation is required and it is by an exception that suspension can be ordered pending inquiry. He submits that since the petitioner's suspension of kerosene oil was ordered pending inquiry hence the same has come to an end after expiry of two weeks.

4. Learned Standing Counsel appearing for the respondents submits that the petitioner did not submit any reply and further it was on account of the petitioner's non submission of his reply that the order could not be passed.

5. We have considered the submission of the learned counsel for the parties and have perused the record.

6. Clause 11 of the Order, 1962 is as follows:

[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.]

7. A perusal of the aforesaid provision indicates that the 1st proviso of Rule 11 of the Order, 1962 contemplates that the licensee shall be given a reasonable opportunity of submitting his explanation before license is suspended except when suspension is pending inquiry. With regard to suspension pending inquiry an outer limit of two weeks have been provided for. The object of the said rule is that normally suspension of kerosene oil licensee should be ordered after giving due opportunity and in case it is made suspension pending inquiry it has outer limit of two weeks. A perusal of the suspension order dated 30.4.2013, clearly indicates that suspension order was pending inquiry, hence the said suspension shall come to an end after expiry of two weeks. However, the mere fact that suspension order which was passed pending inquiry has come to an end after two weeks does not preclude the authorities from passing a final order under the 1st proviso of Rule 11 of the Order, 1962.

8. In view of the facts of the present case, no useful purpose will be served in keeping the writ petition pending and calling for a counter-affidavit. We are of the view that the suspension order dated 30.4.2013, which was pending inquiry shall cease to operate after two weeks. However, it shall be open for the authorities to pass a final order under the first proviso of Rule 11 of the Order, 1962 in accordance with law. With the aforesaid observation, writ petition is disposed of.