
(2013) 02 AHC CK 0170

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1437 of 2013

M/s. Brij Mohan Filling Station

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 22-02-2013

Acts Referred:

Citation : (2013) 3 ADJ 320

Hon'ble Judges : Vinay Kumar Mathur, J;Uma Nath Singh, J

Bench : Division Bench

Advocate : Pradeep Singh Somvanshi and Priyank Yadav, for the Appellant;
Manish Jauhari, for the Respondent

Final Decision : Allowed

Judgement

1. We have heard learned counsel for parties and perused the pleadings of writ petition. The brief facts leading to filing of this writ petition are that the impugned order of termination besides being totally illegal and arbitrary is also completely without jurisdiction since there is no provision under the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 2005, Marketing Discipline Guidelines, 2005 and G.O., dated 5.8.2008 for termination of licence by the District Magistrate. Clause 6.1.1 (c) of Marketing Discipline Guidelines, 2005 provides that:

If the sample is certified to be adulterated, after laboratory test, a show-cause notice should be served upon the dealer and the explanation of the dealer sought within 7 days of the receipt of the show-cause notice. If the explanation of dealer is not satisfactory, the company should take penal as given in Appendix-1.

2. Paragraph 11 of G.O., dated 5.8.2008 provides that the punishment in event of any malpractice by the Retail Outlet Dealer has to be prescribed by the Authorized Officer of the Oil Company. In the present case termination order has been passed by O.P. No. 2 and not by the officer of the oil company, and hence, is illegal, arbitrary and without jurisdiction.

3. Opposite Party No. 2 has passed termination order dated 31.10.2012 in light of power conferred under paragraph 8(3) of the Government Order dated 5.8.2008. In fact the provision under which opposite party No. 2 has passed the termination order is related to malpractice of stock variation and is not at all related to adulteration of Motor Spirit and High Speed Diesel whereas licence of the petitioner has been terminated on charge of adulteration and not on the charge of stock variation. Thus according to the petitioner, this clearly shows that the impugned order has been passed without application of mind, arbitrarily and in haste to terminate the licence of the retail outlet.

4. Learned Senior Counsel Sri J.N. Mathur submitted that the impugned order passed by District Magistrate, Amethi cancelling the licence is not justified. The inspection was carried out under Government Order dated 5.8.2008 which provides for inspection/raids to be carried out in respect of petrol and diesel pumps under the Marketing Discipline Guidelines, 2005. vide Paragraph 11 of the Government Order, the punishment, if any, that may be imposed for violation of the Government Order, has to be left to the oil company.

5. Learned Counsel for the State does not find any answer to the aforesaid submission.

6. Learned counsel for the Indian Oil Company also seems to be in agreement with the submission.

7. On due consideration of rival submissions, we are of the view that the inspection in question was carried out under the Government Order dated 5.8.2008. However, that Government Order was not issued under the provisions of Essential Commodities Act. Inspection as referred to has to be carried out only in terms of Marketing Discipline Guidelines, 2005. Paragraph 11 of the Government Order since specifically provides that the oil company would be Competent Authority to take action for any violation, the impugned order passed by the District Magistrate cancelling the licence to run the petrol/diesel outlet appears to be in clear violation thereof. Undoubtedly, the oil company has no role when an inspection is carried out under the control order issued-under the provisions of Essential Commodities Act and the District Magistrate can proceed in terms thereof but in the instant case, the position is altogether different. Thus the District Magistrate was incompetent to pass the order. In view of the aforesaid legal position, the impugned order (Annexure 1) is hereby quashed and the writ petition is allowed accordingly.