

(2016) 05 PAT CK 0127

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3414 of 2016

M/s Satyadeo Tiwari

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 26-05-2016

Acts Referred:

Citation : (2017) 1 BBCJ 15 : (2016) 4 PLJR 817

Hon'ble Judges : Dr. Ravi Ranjan, J.

Bench : Single Bench

Advocate : Mr. N. K. Agrawal, Senior Advocate and Mr. Dhananjaya Nath Tiwari, Advocate, for the Petitioner; Mr. Ajay Bihari Sinha-SC-19 and Mr. Surya Kant Kumar, AC to SC-19, for the State; Mr. A.K. Jha, Senior Advocate and Mr. Sanat Kumar Mishra, Advocates, for the

Final Decision : Allowed

Judgement

Dr. Ravi Ranjan, J.(Oral) - CWJC No.3414 of 2016

I have heard parties and perused the records of this case.

2. The petitioners are aggrieved by Annexure-1, which is a letter contained in Memo No.957 dated 16.12.2015 written by the District Magistrate, Gopalganj to the State Government, by which the allotment of kerosene oil to the petitioners' firm has been stopped in view of the guidelines contained in the letter no.8346 dated 26.10.2015, as contained in Annexure-2, issued by the State Government addressed to all the District Magistrates.

3. The petitioners further seek quashing of the aforesaid letter dated 26.10.2015, as contained in Annexure-2, issued by the Secretary of Food and Consumer Protection Department, Govt. of Bihar clarifying that in case any request for continuing allotment of kerosene oil after death of one of the licensee and upon reconstitution of the firm by the oil company is made then the allotment should be stopped forthwith in view of Clause 9 of the statutory provision because, after death of the licensee, the trade licence cannot be

granted to the reconstituted firm/agency.

4. The petitioners further seek direction to the licensing authority, i.e., respondent no.3 for inserting the name of petitioner nos. 2 and 3 in the licence and, further, for a direction to the authorities to restore the supply of kerosene oil to the petitioners' firm.

5. The short facts emanating from the averments made in the writ petition are narrated as under :-

The wholesale dealership of kerosene oil was awarded by the Indian Oil Corporation to the proprietor of M/s Satyadeo Tiwari, the grandfather of petitioner nos. 2 and 3 for which an agreement was executed on 25.03.1968 with the Indian Oil Corporation. Subsequently, the only son of aforesaid Satyadeo Tiwari, viz., Dharnidhar Tiwari was made partner and, accordingly, the firm was converted into a partnership firm. After coming into force of Bihar Trade Articles (Licenses Unification) Order, 1984 (hereinafter referred to as the Unification Order for the sake of brevity), the petitioners' firm was allotted Licence No.06/1985 and Satyadeo Tiwari and Dharnidhar Tiwari entered into an agreement with the Indian Oil Corporation. Thereafter, Satyadeo Tiwari died on 7.08.1992 and the firm was being operated and carried by his son, namely, Dharnidhar Tiwari. The petitioner nos. 2 and 3 applied for addition of their name as partners in the firm in the life time of the Dharnidhar Tiwari, who died on 4.07.2015. Thereafter, the Indian Oil Corporation vide Annexure-5 dated 15.07.2015 granted consent for temporary operation till September, 2015 and requested to submit reconstitution proposal in view of the death of the aforesaid Dharnidhar Tiwari. On 30.09.2015, the petitioners entered into an agreement with the Indian Oil Corporation for operating and carrying out the S.K.O. Agency of M/S Satyadeo Tiwari. The Indian Oil Corporation vide its letter dated 19.08.2015 (Annexure-6) informed the petitioners regarding reconstitution of the dealership stating that the petitioner no.2 is having 51% share whereas petitioner no.3 is having share of 49% in the business. The petitioners, thereafter, represented before the District Supply Officer, Gopaganj for inclusion of the name of the petitioner nos. 2 and 3 in the licence granted to M/s Satyadeo Tiwari's firm, however, in place of addition of their names in the licence, the petitioners' supply has been disrupted vide Annexure-1 in view of the guidelines issued by the Secretary of the Department vide Annexure-2 as stated above.

6. Two counter affidavits have been filed on behalf of the respondent no.1. A counter affidavit has also been filed on behalf of respondent nos. 3 and 4. The grounds taken in the counter affidavits are that, as per Clause 9 of the Unification Order, reconstitution of firm cannot be allowed after the demise of the licensee. Secondly, in view of the Resolution No.1183 dated 3.04.2006 published in the Bihar Gazette (extraordinary) on 10.04.2006, for the purpose of countering the black-marketing of kerosene oil, a decision was taken by the Government to confer monopoly of distribution of kerosene oil upon Bihar State Food and Civil Supply Corporation and, as such, now licence cannot be issued to

the firms. However, it is contended on behalf of the petitioners that the issues are no longer res integra as a Single Judge Bench of this Court vide order dated 21.06.2013 passed in CWJC No.7956/2011 (Raj Shekhar Kumar v. The State of Bihar) has already dealt with scope, ambit and sweep of Clause 9 of Unification Order and has held that Clause 9 of the Unification Order is not restrictive rather it gives wide powers to the licensing authority with regard to the addition, deletion and alteration to the licence including that of the names of the partners etc. of the firm. In the aforesaid case also, the petitioners had applied to the District Magistrate for allotment of quota of SKO to the concerned firm annexing the letter of reconstruction of the firm and the dealership agreement made between them and the Oil Company. A question was formulated and considered by the learned Single Judge as to whether, on the death of the sole proprietor of the firm, his heirs and successors who had applied, can be permitted to continue the firm with necessary alteration in the licence either as a proprietorship or as a partnership firm" The relevant passages from the aforesaid decision formulating and answering the issue are extracted as under :

"The question would be whether on the death of the sole proprietor of the firm, his heirs and successors who apply for the same can be permitted to continue the firm with necessary alteration in the licence either as a proprietorship concern or as a partnership. It is evident that when a partnership firm is reconstituted with a new person entering into the said firm, he has all rights and liabilities as the earlier partners under the partnership law; the said firm is practically a new firm although the business may continue to be carried on in the name of the old firm. If such induction of an absolute stranger into a partnership firm is permissible in terms of Clause-9, this Court is unable to understand as to how the immediate heirs and successors of the erstwhile licensee can be excluded from enjoying the same benefit of continuing the firm by getting their names added into the licence either as proprietor or partner provided there is no dispute within the family with regard to those person or persons being allowed to continue the business of the firm.

In the aforesaid view of the matter, in my view, the provision of clause 9 of the 1984 Order regarding addition, deletion and alteration in the entry made in the licence has full force in the facts and circumstances of the case and the licensing authority ought to have considered the application of the petitioners and not taken the stand that the same is not permissible".

7. It would be manifest from the aforesaid that, while considering the identical issue, it has been decided by the learned Single Judge that licensing authority ought to have considered the application of the petitioners and not taken the stand that the same is not permissible in view of clause 9 of the Unification Order. This Court is also in full agreement with the view expressed by the learned Single Judge.

8. So far as the decision of State Government granting monopoly to BSFC for distribution of kerosene oil is concerned, the operation of the same was stayed

by a learned Single Judge Bench in CWJC No.4421 of 2006. The learned Single Judge while disposing of the matter vide order dated 26.03.2012 has observed after considering the supplementary counter affidavit filed on behalf of the State that the letter under challenge was not in practise till that date and, at that moment, the State Government was not intending to proceed in the manner as laid down in the said letter. Such being the situation, this Court had directed the respondent no.1 to come up with a clear cut stand as to whether such decision, as contained in Annexure-8, has factually been enforced or not and whether S.K.O. S Agency has been given to the BSFC or not?. A stand has been taken in paragraph nos. 6 and 8 of the one of the counter affidavits filed on behalf of the respondent no.1 that after issuance of Resolution No.1183 dated 3.04.2006, S.K.O. Agency has never been given to BSFC. On such statement having been made on behalf of the respondents, in my view, the decision not to include the petitioners in the licence and not to continue allotment to its firm and other similarly situated firms would lead to a situation of stalemate as the question would be as to how the kerosene oil would be distributed now.

9. Thus, in my view, merely formulating such policy would not be enough. Unless the aforesaid resolution is enforced in the State, denial of licences or stopping allotment to old firms would jeopardise the distribution of kerosene oil in the entire State of Bihar. Thus, till such policy is enforced in its totality, in my view, the allotment should not be stopped taking shelter of such policy decision.

10. In view of the aforesaid consideration, in my view, the licensing authority ought to have considered the case of the petitioner nos. 2 and 3 for inclusion of their names in the licence granted to M/s Satyadeo Tiwari's firm after reconstitution and after entering into an agreement with the oil company in accordance with law and in terms of clause 9 of the Unification Order as has been held above and also for renewal of licence on such request having been made by the licensee along with requisites. Similarly, if the petitioners are allowed to be included in the licence, the firm would also be entitled for restoration of allotment in its favour as it has already entered into dealership firm with the Indian Oil Corporation.

11. As a result, this writ application stands allowed with a direction to the licensing authority to consider the claim of petitioner nos. 2 and 3 for inclusion of their names in the licence granted to M/s Satyadeo Tiwari in terms of clause 9 of the Unification Order and in terms of Annexure-9 as it is empowered to consider such request as has been held above. That apart, the firm would also be entitled for restoration of allotment to it, as the policy as contained in Annexure- 8, could not be implemented till date by the State Government. Accordingly, the direction contained in Annexure-2 would also not have binding effect for the said purpose on the licensing authority.

12. It is expected that entire exercise would be completed by the licensing authority within a period of four weeks from the date of receipt/production of a copy of this order.

CWJC No.8020 of 2016

13. In this writ application also, identical issue is involved. The allotment to the firm has been stopped on the ground that the agreement between the firm and the Indian Oil Corporation has been executed on 27.10.2009, i.e., after the resolution dated 3.04.2006 deciding to grant monopoly of the distribution of dealership of kerosene oil to the B.S.F.C.

14. This Court has already reached to the conclusion that unless that policy is implemented in its totality, such refusal would lead to chaotic situation as neither B.S.F.C. would be dealing in distribution of kerosene oil nor would the firms under the agreement with the Indian Oil Corporation be allowed to do so.

15. Accordingly, this writ application is allowed with a direction to the District Magistrate, Sitamarhi to resume the supply to the petitioners' firm, namely, M/s Nagdeo Traders within four weeks from the date of receipt/production of a copy of this order.

CWJC No.8172 of 2016

16. In this writ application also, identical issue is involved. The allotment to the firm has been stopped on the ground that though the name of Sri Ganesh Kuamar Agrawal was entered prior to the resolution of the State Government dated 3.04.2006 but the agreement with the Indian Oil Corporation, after death of one of the partner, i.e., the mother of Ganesh Kumar Agrawal, viz., Mani Devi on 29.03.2000, was made on 3.03.2011, i.e., after the aforesaid resolution.

17. In my view, such action was unwarranted in view of the fact that the State Government has not been able to implement the aforesaid policy as contained in the aforesaid resolution dated 3.04.2006 at all, therefore, the petitioner's firm would be entitled for resumption of supplies immediately.

18. Accordingly, this writ application is allowed with a direction to the District Magistrate, Sitamarhi to resume the supply to the petitioner's firm within a period of four weeks from the date of receipt/production of a copy of this order.