
(2010) 02 AHC CK 0182
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition Nos. 111 and 1478 of 2010

Naseem Ahmad

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-02-2010

Acts Referred:

Citation : (2010) 02 AHC CK 0182

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

Final Decision : Allowed

Judgement

Virendra Singh, J.

Heard Shri S.M. Iqbal Hasan and Shri A.B. Singh for the petitioners and Smt. Subhash Rathi, Learned Standing Counsel for the respondents.

Counter and rejoinder affidavits have been exchanged and with the consent of the parties this writ petition is being finally disposed of.

For deciding both the writ petitions, it is sufficient to refer to the pleadings in Writ Petition No.111/2010. The petitioner, Naseem Ahmad was granted licence under "The Uttar Pradesh High Speed Diesel Oil and Light Diesel Oil (Maintenance of Supplies and Distribution) Order, 1981 (hereinafter called the "Order, 1981"). Copy of the said license is filed as Annexure1 to the writ petition. The said license has been renewed from time to time. The petitioner's premises was also approved from where he has been running his shop. Petitioner made an application to the District Supply Officer (hereinafter called the "DSO") on 29/8/2008, stating that the shop which was in the petitioner's tenancy is to be vacated hence boundaries of another shop which is across the road be approved. Supply Inspector inspected the boundaries and verified the boundaries vide his report dated 12/9/2008. However, the District Supply Officer vide his letter dated 04/10/2008 suspended the licence of the petitioner. However, the licence was restored by forfeiting the security of Rs. 5,000/ which order was challenged in the appeal and the appeal was allowed on 18/3/2009. It appears, that the

District Supply Officer vide its letter dated 23/6/2009, wrote to the State Government for clarification referring to the Government Order dated 23/12/2005 which provides that the boundaries of the shop cannot be changed because the change of place of business amounts to be a new appointment. The State Government vide its subsequent letter dated 07/9/2009, informed the District Supply Officer that it is not possible to change the boundary in view of the Government Order dated 23/12/2005. Petitioner has come up before this Court for quashing the orders dated 24/10/2009, and 07/9/2009 passed by the District Supply Officer and Joint Secretary, Department of Food and Civil Supply respectively.

Counter affidavit has been filed on behalf of the State Government referring to the Government Order dated 23/12/2005, stating that the State Government had decided that the change of place is in essence a fresh appointment which can be made in accordance with the rule, hence the permission to change the boundaries cannot be granted on the said pretext.

Smt. Subhash Rathi, Learned Standing Counsel appearing for the respondents further submits that the Government Order has been issued on 04/7/2006 by which the power of the District Magistrate to issue licence has come to an end after the issuance of Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractice) Order, 2005. Learned Standing Counsel further submits that the Government Order dated 23/12/2005, is fully applicable and no error has been committed by the District Supply Officer in rejecting the application of the petitioner for change of premises.

Learned counsel for the petitioner contends that the petitioner's licence granted to the petitioner clearly contained a condition that the licensee shall run his business on the approved place, but with the permission of the licensing authority, the place can be changed or additional place can also be used. Copy of the license has been filed as Annexure1 to the writ petition.

Learned counsel for the petitioner submits that the permission for change of premises ought to have been given by the licensing authority since the petitioner is not shifting his business to any new locality, rather he is praying for change of the premises across the road because the shop has been got vacated by the Landlord. He submits that the Government Order dated 23/12/2005, is applicable where the place is being changed at a new place which requires opening of new shop.

Learned standing counsel refuting the submission of the learned counsel for the petitioner has reiterated the case as taken in the counter affidavit.

After hearing the learned counsel for the parties and perusing record, the issue which has come up for consideration before us is the interpretation of the Government Order dated 23/12/2005. The licence was granted to the petitioner under the Order, 1981.

Clause 4 of the Order, 1981 provides as follows:

"4. Licence. (a) For the grant of renewal of a licence an application in "Form "B", attached to his Order, shall be given to the Licensing Authority.

(b) Every licence granted or renewed under this Order shall be in Form "C" and shall be subject to the conditions specified therein. "

Order, 1981 thus provides that every licence granted shall be subject to the conditions specified therein. Thus, the condition that the licensee with the permission of the licensing authority can change the premises or additional premises can be approved are referable to Clause 4 of the Order, 1981.

The Government Order dated 23/12/2005, has to be read in the light of the Order, 1981. A perusal of the Government Order dated 23/12/2005, indicates that what was prohibited by the State Government is that the Petty Diesel Oil Licensees on the pretext of change of premises cannot be permitted to change the places so as to defeat the procedure for new appointment. The Government Order dated 23/12/2005, in fact prohibited such change of place which amounts to opening of shop at a place where new business was required to be taken. For example, if a license has been granted for A locality, he cannot be permitted to change the premises to locality B. Change of premises may be necessitated due to several unavoidable circumstances for example, vacation of shop, shop itself may be damaged by natural calamity or there may be other reasons. Permission is required from the licensing authority, for satisfying the licensing authority that premises is fit for running the business in question.

In the present case, the premises which has now been obtained is across the road and has been necessitated by the eviction of the shop. Such contingency cannot be covered by the Government Order dated 23/12/2005. However, the licensing authority can refuse the permission if the shop is being shifted to a different locality or being shifted at a place where new licence may be required for running the business. Government Order dated 23/12/2005, can be saved only by the above interpretation, otherwise it may contravene the Order, 1981 Clause 4 as quoted above. The subsequent letter dated 07/9/2009 is only a reiteration of Government Order dated 23/12/2005, and it cannot be said that there is a complete prohibition in the Government Order dated 23/12/2005 for changing the boundaries of the premises.

In view of the aforesaid, it is held that the District Supply Officer has to apply his mind for the change in the premises sought by a licensee and has to take a decision. We make it clear that cases where new licence is required or where the locality itself is being changed cannot be permitted in view of the Government Order dated 23/12/2005, but in other cases each case has to be considered on its own facts.

In Lalit Kumar's case, prayer has been made for quashing the order dated 21/11/2009, by which order the earlier order dated 30/1/2009 by which the

premises were changed has been cancelled. In Lalit Kumar's case earlier the shop was taken by the petitioner on rent and now petitioner has constructed his own house and has thus prayed for change which shop was only 50 metres away from the earlier premises. In view of the above, we are of the view that no error was committed in permitting the change of the premises by order dated 30/1/2009 and subsequent order dated 21/10/2009 cannot be sustained.

In view of the aforesaid, both the writ petitions are allowed. Order dated 24/10/2009, passed by the District Supply Officer in Writ Petition No. 111/2010 and the order dated 21/11/2009 in Writ Petition No. 1478/2010 are hereby quashed. In writ petition No. 111/2010, a further direction is issued to the District Supply Officer to pass a fresh order on the application of the petitioner for change of the premises in the light of the observations as made above.