
(2002) 10 AHC CK 0058
In the Allahabad High Court
Case No : C.M.W.P. No. 15233 of 1994

Nau Bahar Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-10-2002

Acts Referred:

Citation : (2003) 3 AWC 2210

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : Atul Mehra, for the Appellant;

Final Decision : Dismissed

Judgement

Anjani Kumar, J.—This writ petition was heard by me and after hearing learned counsel for the parties, I have dismissed the petition vide order dated 8th October, 2002, for the reasons to be recorded later on. Now here are the reasons for dismissing the aforesaid writ petition.

2. By means of present writ petition under Article 226 of the Constitution of India petitioner, who is a licensee for selling diesel oil under the provisions of U. P. High Speed Diesel Oil and Light Speed Diesel Oil (Maintenance of Supplies and Distribution) Order, 1981, which hereinafter shall be referred to as the "licensing order", challenges the order of the appellate authority dated 27th January, 1994, passed in Appeal No. 9 of 1992-1993. The aforesaid licensing order has been issued in exercise of power under Essential Commodities Act, 1955, hereinafter referred to as the "Act". Petitioner has annexed a copy of the licence as Annexure-1 to this petition, which was granted under the provisions of the aforesaid licensing order, which contain conditions also. According to the conditions of licence, in case of violation of any of the conditions mentioned therein, the licence of the petitioner can be cancelled and he will be punished under the provisions of Section 7 of the Act.

3. A show cause notice has been issued by the Collector/Licensing Authority on

1st January, 1991 to the petitioner referring certain irregularities and illegalities found through inspection dated 18th December, 1990, asking him to show cause as to why his licence aforesaid should not be cancelled and suspended the licence immediately pending decision on the show cause notice. The petitioner-licensee has submitted reply to the aforesaid show cause notice, which has been considered by the District Magistrate/ Collector, Bijnor and it was found by the Collector that the petitioner has breached the Condition Nos. 4 (1), (5) and (6) and, therefore, licence of the petitioner aforesaid was cancelled with immediate effect. A prosecution u/s 3/7 of the Act was also lodged against the petitioner before the Special Judge (E. C. Act)/ Additional Sessions Judge, Bijnor, whereby after trial, the petitioner was held guilty and convicted for an offence punishable u/s 3/7 of the Act for contravention of the conditions of the licence and also for the contravention of licensing order, for the term already undergone and to pay a fine of Rs. 1,000 u/s 3, read with Section 7(1)(a)(i) of the Act.

4. Petitioner aggrieved by the aforesaid conviction order preferred an appeal being Criminal Appeal No. 428 of 1993 before this Court and this Court has stayed the realisation of fine vide its order dated 18th March, 1993, a copy of which is annexed as Annexure-5 to this petition. Thereupon petitioner preferred an appeal before the Commissioner, Moradabad Division, Moradabad, against the order dated 15th April, 1991. The said appeal was dismissed by the appellate authority/ Commissioner vide its order dated 27th January, 1994. It is this order of the appellate authority, which has now been challenged by the petitioner by means of the present writ petition, which is annexed as Annexure-7 to this petition.

5. The sole argument advanced by learned counsel appearing on behalf of the petitioner is that by the G.O. dated 15.10.1988, the condition of issuing cash memo is not mandatory but secondary, therefore, the cancellation of the licence of the petitioner on that ground is liable to be set aside. A perusal of the order impugned in the present writ petition and also the order of the licensing authority will demonstrate that not issuing cash memo was one of the grounds for cancellation of licence, but there are several other grounds on which the licence of the petitioner was cancelled. With regard to that learned counsel for the petitioner has failed to demonstrate that the same would be covered by the findings, referred to above. The findings recorded by the appellate authority affirming the order of the licensing authority, being an order of affirming the findings of subordinate authority do not warrant any interference under Article 226 of the Constitution of India and particularly when learned counsel for the petitioner has failed to demonstrate that the findings recorded by the appellate authority, whereby the appellate authority affirmed the order passed by the licensing authority do not suffer from the manifest error of law. In this view of the matter, this writ petition deserves to be dismissed and is hereby dismissed.

6. In view of what has been stated above, this writ petition being devoid of any merits and is accordingly dismissed. The interim order/orders, if any, stands

vacated. However, the parties shall bear their own costs.