
(2005) 03 UK CK 0032
In the Uttarakhand High Court
Case No : Writ Petition No. 1248 of 2003

Prem Singh

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 03-03-2005

Acts Referred:

Citation : (2005) 3 UC 1416

Hon'ble Judges : V.S.Sirpurkar, C.J;Prafulla C. Pant, J

Bench : Division Bench

Advocate : Lok Pal Singh, for the Appellant; J.P. Joshi, Addl. Chief Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

V.S. Sirpurkar, C.J.—Heard finally with the consent of the parties.

2. The petitioner challenges the order passed dated 09-04-2003, whereby his retail diesel license no. Hrh 42/95, which was valid upto 31-03-2003, was refused to be renewed for the year 2003-04. This order was passed on the ground that his shop was within 8 kms. Of distance from the retail outlet of diesel in the plane-area and as directed in government order no. 633/s. Food/2002 dated 26-04-2002, such licenses of the petty dealers, who were operating within 8 kms. Of the retail outlet, should not be renewed.

3. The petitioner came before this court by way of this writ petition on 28th december, 2003 and his writ petition was entertained. The main basis of the writ petitioner was that his case was completely covered by the division bench judgment of this court in civil writ petition no 252 of 2003 (m/b). In that case, relying on a decision reported in 2002 (4) SC 98 in the case of State of U.P. and ors. v. Daulat Ram Gupta, this court held that the condition regarding the retail outlet being beyond a distance of 5 or 8 kms., as the case may be, contained in government order dated 26-04-2002; was bad in law as it was contrary to and inconsistent with clause 16(6) of the u.p. High speed diesel oil and light diesel oil

(maintenance of supplies and distribution) order, 1981. There is no dispute before us that the same statutory order, which is passed under the provisions of the essential commodities act, is applicable to the state of uttaranchal also. In that judgment, the division bench of this court clearly held that the controversy was fully covered by the aforementioned supreme court judgment and therefore, held that the direction no. 2 in the impugned government order dated 26-04-2002 was bad in law and thus it was directed to be quashed.

4. When we see the said government order dated 26-04-2002, we find that it is only this very order, which is being relied upon by the respondent state. It is, no doubt, true that the direction no. 2 pertained to the grant of license and it suggests that the petty diesel dealer should operate beyond the distance of 25 kms. In hill area and 8 kms. In plains (excluding national & state highways). From this, it was tried to be suggested by mr. J.p. Joshi, addl. Chief standing counsel that this court had merely found fault with direction no. 2 alone and since the present petitioner is claiming the renewal, the controversy involved in the present writ petition would not be covered by the judgment of this court referred to above.

5. We are unable to agree with the government pleader. When we see clause 6 & 8 of the government order dated 26-04-2002, which deals with the rural areas and the renewal the same kind of distance conditions are to be found as are found in clause 2. While clause 6 deals with the grant of license in village areas, clause 8 deals with the renewal in rural as well as the urban areas and we find the same distance clause in these two clauses. For the sake of convenience, clause 2, clause 6 and clause 8 of the government order dated 26-04-2002 are quoted as below:

(2) ? ? ? ? ? | : ? () ? ? 25 . . ? ? ? ? 8 . . ? ? ? ? ? ? ? ? |

(6) ? ? ? ? ? 25 . . ? ? ? ? 8 (? ? ? ?) ? ? ? , ? ? ? |

(8) ? ? ? ? ? ? 3 ? ? ? ? 25 . . ? ? ? ? 8 . . ? ? ? ? ? ? , ? ? ? ? ? ? |

6. When we compare these clauses and more particularly, clause 8 with clause 2, it cannot be disputed that clause 8 runs in the same spirit as clause 2. It is apparent from the record that the renewal has been refused only on the basis of clause 8 and more particularly, because the petty dealer, concerned herein, was operating within 8 kms. Of diesel retail outlet. When we consider the clear law laid down in the case of State of U.P. and Ors. v. Daulat Ram Gupta (Supra) and also in the judgment of this court in civil writ petition no. 252 of 2003 (m/b), it is clear that not only the grant of license, but the renewal of license is also covered in the supreme court judgment. We do not find any qualitative difference between clause 2 and clause 8 of the government order dated 26-04-2002, which deals with the renewal.

7. It is clear from the supreme court judgment that the apex court, therein, found very clearly that any such directions given under the power of clause 16(6)

of the statutory order of 1981 should not be inconsistent with the spirit of this statutory order since the statutory order was a complete code in itself. The apex court, therein, has scoffed at the effort on the part of the state government to issue a direction and to create a new clause regarding the distance and viewed it as an attempt to amend the statutory order. The apex court, further, held that such attempt was not permissible.

8. We are of the clear opinion that the controversy involved in the present writ petition is completely covered by the aforementioned supreme court judgment as also by the judgment of this court in civil writ petition no. 252 of 2003 (m/b).

9. Therefore, we allow this writ petition and direct the state government to reconsider the application of the petitioner for renewal in the light of the observations made by us for further years.