

(2009) 12 AHC CK 0270

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 12837 of 2009

Ramrati Pastor

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-12-2009

Acts Referred:

Citation : (2009) 12 AHC CK 0270

Hon'ble Judges : R.K.Agrawal, J and Jaya Shree Tiwari, J

Final Decision : Dismissed

Judgement

Jayashree Tiwari, J.—We have heard learned counsel for the parties.

2. The present writ petition has been filed for seeking a writ order or direction in the nature of certiorari quashing the order dated 15.1.2009 passed by respondent no.4 and the Government Order dated 15.1.2009 issued by respondent no.2 and further a writ of mandamus commanding the respondent no. 4 to issue fresh licence of Petty Diesel Dealership in the name of petitioner in Village Bijna, TehsilTahrauli, District Jhansi.

3. The brief facts of the case are that the petitioner is the wife of late Madhav Prasad Pastor, R/o Village and Post Bijna, Tehsil Tahrauli, District Jhansi who was a freedom fighter and had been allotted a Petty Diesel licence in the quota of freedom fighter and was holding the aforesaid licence for Petty Diesel Licence and doing dealership in the same till his death. Licence in the name of her husband was later on renewed upto 2010 but in between her husband died on 28.8.2008, copy of the licence dated 16.6.2006 as well as death certificate dated 28.8.2008 is annexed as annexure1 to the writ petition respectively. Petitioner being wife of the freedom fighter and on the death of her husband, applied for issuance of Petty Diesel Licence, previously granted in favour of deceased husband. She applied in view of the Government Order dated 17.2.2002 which is annexed as annexure4 to the writ petition, but the concerned authorities paid no heed to her application, whereupon writ petition No. 54993 of 2008 was filed by the petitioner.

4. The aforesaid writ petition was disposed of by the Hon"ble High Court, directing the authorities to decide the petitioner's representation vide order dated 6.11.2008, a true copy of which is annexed as annexure5 to the writ petition. Petitioner filed representation before the respondent no.4 for grant of Petty Diesel Licence in her name, copy of which is annexed as annexure6 to the writ petition. But the aforesaid application of the petitioner was rejected by the concerned authorities in the light of the G.O. Dated 2.2.2007 holding that the licence cannot be given to the petitioner. The rejection order passed by the respondent no.4. Against the rejection order petitioner has come before this Hon"ble Court by means of the present writ petition.

5. Sri Dilip Kumar, District Supply Officer filed counter affidavit on behalf of respondents in which he has denied the contentions of the petitioner and has stated that the contentions of the petitioner are not correct and he has further submitted that according to prevailing Government Order dated 2.2.2007, the issuance of Petty Diesel Licence cannot be granted in favour of the dependent of the deceased, hence the order passed by the Authority is genuine and there is violation as alleged.

6. In reply to the aforesaid counter affidavit, a rejoinder affidavit has been filed on behalf of the petitioner in which it is stated that the Government Order dated 2.2.2007 is not applicable to the petitioner and she is claiming her right being dependent of freedom fighter etc.

7. We have heard learned counsel for the petitioner and learned Standing Counsel and gone through the records.

8. A perusal of the record shows that undoubtedly a petty diesel licence was granted in favour of the deceased husband of the petitioner on account of his being freedom fighter and the same licence was renewed up till 31.3.2010 but suddenly the husband of the petitioner died on 28.8.2008. By the time, the husband of the petitioner died, the operation of the earlier Government Order dated 17.2.2002 was superseded by the subsequent Government Order dated 2.2.2007. In the earlier Government Order, there was a provision for consideration of the dependents of the freedom fighter in case of demise of the freedom fighter. Taking into consideration the good conduct and goodwill of the deceased licensee but in the subsequent Government dated 2.2.2007, the said provision has been deleted and it is provided therein that rights of the District Magistrate to issue new licence for Petty Diesel Dealership have been abolished. It is also provided in the sub clause 2 of the G.O. that as the system for issuing new licence have been abolished, hence on the death of the licensee, no new licence as a dependent of the deceased could be issued. Thus, in pursuance of the subsequent G.O., District Magistrate has no authority to issue new licence and he is also prohibited from issuing licence in favour of the dependent on the demise of the original licence holder. In the light of these provisions as annunciated in the subsequent G.O., respondent no.4 appears to have no power to issue or consider about the new licence as alleged. The order of the

respondent does not seem to be arbitrary or in violation of the G.O. which is in force presently.

9. In these circumstances, the writ petition appears to be misconceived and have no force in itself and is, accordingly dismissed.