
(1992) 03 GAU CK 0016
In the Gauhati High Court
Case No : Civil Rule No. 4914 of 1991

Samir Kumar Deb Barma

APPELLANT

Vs

State of Tripura

RESPONDENT

Date of Decision : 26-03-1992

Acts Referred:

Citation : (1992) 1 GLJ 325

Hon'ble Judges : U.L.Bhat, C.J. and D.N.Baruah, J

Bench : Division Bench

Advocate : B.K.Das, P.K.Musahary, P.K.Barman, D.P.Chaliha, Advocates
appearing for Parties

Judgement

D.N. Baruah, J.—The petitioner has filed this writ application praying for issuance of an appropriate writ for quashing the impugned Annexure S memorandum dated 19.12.91 passed by the third respondent and the Annexure W order dated 13.12.91 passed by the second respondent. The petitioner has also challenged Annexure F order dated 5.6.91, by which he was asked to surrender the LPG Distributor Licence granted to him and also the Annexure M order dated 28.8.91, passed by the third respondent refusing to renew his licence. On 23.12.91 this Court admitted the application and also issued notice on the interim prayer. Meanwhile, the petitioner was allowed to carry on his business as LPG distributor however, without taking away the right of the fourth respondent. The first to third respondent filed a counter affidavit against the interim prayer. Thereafter, the petitioner filed an application for amendment of the writ petition to incorporate the Annexure W order dated 13.12.91 passed by the second respondent (Appellate Authority) rejecting the appeal filed by the petitioner to form part of the writ petition and also to incorporate some more statements mentioned in paragraph 7 to 10 of the amendment petition. The petitioner also filed a rejoinder to the counter affidavit filed by the first to third respondents. This Court, by order dated 11.2.92 after hearing the parties allowed the amendment as prayed for.

2. The fourth respondent, i.e. Tripura State Cooperative Consumers' Federation Limited, also filed an objection against the interim order. At the time of hearing on the interim order, counsel for the parties agreed that the entire writ petition could be disposed of at this stage and accordingly the counsel addressed this Court in that light.

3. The petitioner claims that he belongs to Tripura Scheduled Tribe Community. He applied for the distributorship in cooking gas (LPG) which was granted to him as proprietor of M/s Tripureswari Gas Agency, IOC (MD) Distributor at North Banamalipur, Agartala. The Licensing Authority, third respondent, granted licence under the provisions of the Tripura Cooking Gas (Licensing, Control and Maintenance of Supplies) Order, 1985 (for short "the 1985 Order"). On the strength of the licence the petitioner was running his business and his licence was renewed by the third respondent for a period of one year commencing from 1.1.87 to 31.12.87. Thereafter, the petitioner's licence was renewed year to year on his application till 1990. Such renewal of licence, according to him, was a routine procedure. In the year 1990 before the expiry of the period of licence, the petitioner applied for renewal of his licence for the next year, i.e. 1.1.91 to 31.12.91. The original licence was also submitted to the third respondent for renewal. As it was a routine matter, the petitioner presumed that his licence would be renewed for the next year also, and, therefore, he was running his business.

4. The petitioner has alleged that in the month of March 1991, because of the interference by some persons having vested interest, trouble started. The third respondent by Annexure D letter dated 24.4.91 asked him to show cause "as to why his LPG Dealers Licence should not be suspended forthwith notwithstanding any other legal action that may be initiated against him under the B.C. Act for committing irregularities mentioned". Thereafter the petitioner submitted his reply by his letter dated 4.5.91. The third respondent without giving any opportunity to the petitioner to refute the allegations made in the said show cause notice, suspended the licence with immediate effect and directed him to surrender the licence within seven days by Annexure F order dated 5.6.91. The third respondent also directed to tag the existing consumers of the petitioner with the fourth respondent and the petitioner was asked to handover the existing stock of LPG cylinder (both filled and empty) with all relevant registers and documents to Chief Executive Officer of the fourth respondent, within three days. The petitioner has further stated that he wanted to surrender the distributorship on 23.4.91 because of the harassment meted out to him, but the Area Manager of the Indian Oil Corporation (IOC) by telegram dated 25th May, 1991 requested him to continue with the normal functioning owing to the commencement of the general election to be held on 12/15th June, 1991 in the interest of the customers, even after the general election was over, the petitioner was requested to withdraw his letter of surrendering the distributorship and accordingly on such request the said letter was withdrawn. After the order of suspension, the petitioner was asked to handover his registers, blue books and other documents

to fourth respondent.

5. Situated thus, the petitioner preferred an appeal before the second respondent on 26.6.91 against the Annexure F order dated 5.6.91 passed by the third respondent. The second respondent called for the records from the third respondent. The third respondent however, did not send the records. After filing the appeal, reminders were sent to second respondent for disposal of the appeal.

6. During pendency of the appeal, the third respondent served yet another notice dated 17.7.91, (Annexure K) asking him to show cause "as to why his prayer dated 21.12.90 for renewal of the LPG Dealers' licence for the year 1991 shall not be refused for dealing in LPG under the provision of Tripura Cooking Gas (Licensing, Control and Maintenance of Supplies) Order, 1985, in addition other legal action that may be initiated against him under the E.C.Act." The petitioner duly replied to the show cause notice denying all the allegations made therein by his letter dated 8.8.91. The third respondent, however, passed Annexure M order dated 28.8.91 refusing to further renew the licence of the petitioner. According to the petitioner, this order was passed without giving him any opportunity of bearing in purported exercise of the clause 5 of the 1985 Order.

7. The petitioner, thereafter moved this Court by filing a writ petition (Civil Rule No. 4039 of 1991) challenging the Annexure F order dated 5.6.91 and Annexure M order dated 28.8.91. This Court by order dated 11.9.91 disposed of the Civil Rule with a direction to the second respondent to dispose of the appeal pending before him and also allowed the petitioner to file appeal against Annexure M order, within one month from the date of filing of later appeal. This Court also ordered that till such disposal, the petitioner should be allowed to carry on his business as Cooking Gas Distributor without taking away the right of the fourth respondent.

8. The petitioner filed another appeal against the Annexure M order dated 28.8.91 before the second respondent as allowed by this Court. After filing of the appeal the second respondent fixed several dates for hearing, however the hearing did not take place on those dates. The matter was heard on 27.11.91 but the hearing was not concluded and deferred to 7.12.91 for further hearing. On that day the petitioner submitted his written argument.

9. The third respondent, thereafter, by Annexure S memorandum dated 18.12.91 informed the petitioner that both the appeals were rejected and directed him the handover existing stock of LPG cylinder (both filled and empty) with all relevant registers and documents to the fourth respondent within seven days. This Annexure S memorandum was sent to the petitioner, without furnishing a copy of the judgment passed in the appeals. The petitioner has alleged that though he requested the Appellate Authority to give a copy of the order, it was not supplied to him till the date of filing this writ petition.

10. The petitioner has contended that he was conducting his business without any blemish during the entire period. According to him, the problem arose only

when the present incumbent assumed office as third respondent and started working under political influence in such a manner that the petitioner could not oblige him. According to him, the order passed by the third respondent was without any basis and the same was passed at the behest of some influential persons, he however, has not given details. According to him, the appellate order was passed by the second respondent without proper application of mind. Therefore, the actions of the respondents were arbitrary and devoid of fair play in making the decision. The appellate order was also violative of principles of natural justice.

11. During the pendency of the writ petition, the petitioner could obtain the appellate judgment and accordingly this was incorporated by making an application for amending the writ petition. This is Annexure W.

12. According to the petitioner, the reasons recorded by the Appellate Authority were not based on proper consideration of facts and circumstances. The appellate order was without any application of mind.

13. The respondents filed counter affidavit against the interim prayer denying the allegations and averments made in the writ petition. The respondents in their counter alleged that there were complaints against the petitioner regarding irregularities, viz. fictitious connections, nondelivery of LPG Cylinders to the registered consumers, nonrendering help to the consumers in the matter of stoppage of leakage of gas from the cylinders supplied by the petitioner etc., and also not obtaining LPG cylinders from IOC by sending money in time and thus causing suffering to the consumers. They further stated the third respondent received series of complaints against the petitioner about the nonsupply of gas cylinders to the registered consumers and after the departmental enquiry it was found that the allegations were correct. Besides, there were allegations that he did not allow rebate of Rs. 2/per LPG cylinder to the consumers who took delivery from the godown/show room as per directions given by the third respondent by letter dated 10.3.87. The third respondent also received complaint that the petitioner did not supply LPG cylinder to the Minister of State, Tripura, on 8.3.91 against the reserved quota in spite of the fact that there was huge stock with the petitioner.

14. The respondents have denied the allegation about violation of principles of natural justice while passing the orders. The respondents have alleged malpractices including issue of unauthorised connections to 173 persons. These allegations of malpractices were of serious in nature.

15. The fourth respondent also filed an objection against the prayer for granting interim order. This respondent has stated, inter alia, that the petitioner suppressed material facts at the time of obtaining the order dated 23.12.91. Inasmuch as he had already commenced supply of LPG cylinder to the consumers of the petitioner as per direction of the third respondent w.e.f. 28.6.91. He has further stated that for proper arrangement of gas cylinders etc. a sum of

Rs. 6,62,828/ was spent by him for construction of godown, deposits and cost of cylinders etc. Besides, a good number of staff were also employed. If the interim order passed in favour of the petitioner was allowed to continue, he would suffer loss.

16. We have heard Mr. B.K. Das, learned counsel for the petitioner and Mr. D.P. Chaliha, learned counsel for the respondents. Mr. B.K. Das has submitted that the third respondent suspended the licence by Annexure F order dated 5.6.91 under purported exercise of the power under the 1985 Order without proper application of mind to the show cause notice dated 24.4.91. While passing the impugned Annexure F order, the third respondent did not give any reason for suspension of the dealership. He further submitted that though petitioner replied by letter dated 8.8.91 against the Annexure K show cause notice, giving full details, third respondent arbitrarily passed the Annexure M order dated 28.8.91, refusing to renew the licence issued to the petitioner simply holding that the reply furnished by the petitioner was vague, unsatisfactory and not convincing. According to Mr. Das, these orders were passed at the behest of some influential persons by the third respondent most arbitrarily and mechanically.

17. Mr. Das has further submitted that the Appellate Authority also passed Annexure W order dated 13.12.91 without giving proper reasons and the second respondent being the statutory authority was required to dispose of the appeals judicially after proper application of mind. However, the impugned appellate order (Annexure W) was passed without giving any reasons and without applying mind to the written submissions made by the petitioner through his counsel. While passing the impugned order the Appellate Authority simply considered the official version and thus the impugned order is liable to be quashed. Mr. Das has further stated that the allegations made in the show cause notices Annexures D and K were not at all substantiated by proper proof and the Appellate Authority jumped to the conclusion that the allegations made against the petitioner were correct without there being any proof. Therefore, the impugned order of suspension and subsequent refusal to renew the licence as per Annexure M were without jurisdiction and liable to be set aside.

18 The Appellate Authority passed the impugned Annexure W order dated 13.12.91 holding that there was no ground to reconsider the orders of suspension of the dealership and refusal for renewal of the licence issued by the third respondent and accordingly the appeals were rejected. The main attack of Mr. Das is that the appellate order passed by the second respondent was devoid of any reasons. In fact, the Appellate Authority did not independently give any decision, he simply recited the allegations made by the third respondent and other officials and rejected the appeals.

19 Mr. D. P. Chaliha, learned counsel for the respondents has supported the impugned Annexure W order dated 13.12.91 contending, inter alia, that the Appellate Authority after proper application of mind to the allegations made against the petitioner and on perusal of records passed the impugned order

dated 13.12.91 rejecting the appeals, and, therefore, the impugned order is not liable to be quashed and set aside.

20. On the rival contentions of the learned counsel for the parties, it is to be seen whether the impugned orders, namely, the appellate order, Annexure W is sustainable in law. No reason was given in the impugned Annexure W order dated 13.12.91. The second respondent only held thus:

"...the representative of the Food & Civil Supplies Directorate submitted that enquiry was conducted by the Field Officers of the Food & Civil Supplies Directorate and it was found that all the members of the Tripureswari Gas Agency Consumers Welfare Committee were in possession of the gas cylinders and they explained that the gas cylinders were supplied to them by the M/s. Tripureswari Gas Agency on payment without registering them as regular consumer and without issuing any cash memo for the filled gas cylinders supplied to them. So it is proved beyond doubt that those persons were actually supplied with gas cylinder by the dealer. Therefore, the question of proving the supply of gas cylinders by producing documents does not hold good and the complaint from 173 persons cannot be considered as false as no point could be put forward by the appellant to show that those persons are nursing any grudge against the dealer for any particular reason...?"

From the findings arrived at by the Appellate Authority it appears that that petitioner was found guilty of supplying cylinders to some persons without registering them as regular customers without issuing cash memo. This finding was arrived at behind the back of the petitioner on the basis of a report of Filed Officers under the third respondent. A copy of the report was not made available to the petitioner to refute the allegation.

21. The show cause notice for suspension of licence, Annexure D, was issued on various charges such as, nonsupply of LPG cylinder to the Minister of State against reserved stock of the Government, failure to give rebate of Rs.2/ to the consumers who collected LPG cylinders from the godown/showroom and also irregular supply as mentioned in the show cause. On the allegation of nonsupply of gas to the Minister of State from reserved quota, there was no finding by the Appellate Authority. Clause 3 (6) (c) (9) of the 1985 Order run as follows

"Every licensee shall maintain a reserve stock of cooking gas in accordance with the written directions of the Licensing Authority and shall dispose of the reserve stock only in accordance with the procedure specified by the Licensing Authority."

The allegation of third respondent in the show cause notice is that LPG cylinder was not supplied to the Minister of State in violation of the said clause 3(6) (c) (9) of the 1985 Order. On reading the said clause it is clear that the licensee is required to maintain a reserve stock cooking gas in accordance with the written directions of the Licensing Authority and dispose of the reserve stock only in accordance with the procedure specified by the Licensing Authority (third respondent).

22. In the case in hand, there was no allegation in the show cause notice that the Licensing Authority gave any written direction to the petitioner to supply cooking gas from the reserve stock nor did the Appellate Authority arrive to any finding that the Licensing Authority issued any direction for supply of the cooking gas, or that the petitioner refused to supply cooking gas in violation of the direction of the Licensing Authority (third respondent). The appellate order, Annexure W, is absolutely silent in this respect. Neither the third respondent nor the second respondent (Appellate Authority) cared to look into that aspect of the matter. Similarly second respondent while coming to the finding that there were irregularities in supplying LPG Cylinders contrary to the provisions of the 1985 Order, mechanically took into consideration the official versions without specifying the reasons who actually complained and the nature of the complaints. All these matters are required to be considered before coming to a final decision as to whether the petitioner's prayer for renewal of licence should be refused or not.

23. Granting of licence is a kind of State largess which every citizen is entitled to seek. If he is issued such licence, his licence can be cancelled by Licensing Authority only on violation of the terms and conditions of the licence, if any, or violation of any of the provisions of 1985 Order. In the instant case, the Appellate Authority did not address himself to relevant aspects of the matter before passing the Annexure W order dated 13.12.91. The second respondent is the statutory authority to decide the appeals against the order passed by the Licensing Authority. The very purpose of conferring right of appeal is to check the arbitrary exercise of power by the Licensing Authority. Therefore, it is important and necessary for the second respondent to properly scrutinise and examine the matter and arrive at a reasonable conclusion. This duty has been entrusted by the 1985 Order to the second respondent for this purpose, and therefore, it is imperative on the second respondent (Appellate Authority) to consider all these aspects; but unfortunately, in the present case, the second respondent failed to do so, in spite of directions given by this Court by order dated 11.9.91 in Civil Rule No. 4039 of 1991. As this has not been done in the present case the appellate order is unsustainable and the appeal requires fresh consideration.

24. For the foregoing facts and the reasons, we dispose of the writ petition setting aside Annexure W order and directing the second respondent i. e. the Appellate Authority, to dispose of afresh the appeals filed by the petitioner in accordance with law and the observations in this judgment and after giving an opportunity to the petitioner to refute materials proposed to be relied on against him. Till such disposal the petitioner will be allowed to carry on his business as LPG distributor. If the petitioner's customers are already transferred to the fourth respondent, the third respondent shall retransfer them to the petitioner till disposal of the appeal. No costs.