
(2005) 11 AHC CK 0108

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 17653 of 2001

Sanjay Gupta

APPELLANT

Vs

Indian Oil Corporation Ltd.& Ors.

RESPONDENT

Date of Decision : 28-11-2005

Acts Referred:

Citation : (2005) 11 AHC CK 0108

Hon'ble Judges : R.K.Agrawal, J and Saroj Bala, J

Final Decision : Dismissed

Judgement

Mrs. Saroj Bala, J.—By means of the present writ petition under Article 226 of the Constitution of India, the petitioner seeks a writ or order in the nature of mandamus directing the respondents to make the Extension Point of dealership at Bistrakh, District Gautam Budh Nagar, permanent. The petitioner also seeks a direction to restrain the respondents from curtailing the operational area of SKD Dealership at Bistrakh.

2. The facts giving rise to the present writ petition broadly stated are as hereunder:

The petitioner's firm M/s. Bulaki Dass Vinod Kumar, Mohan Nagar, District Bulandshahar had dealership of SKO/LDO in the Union Territory of Delhi with its Headquarters at Anaj Mandi, Sahadara. By virtue of a letter dated February 14, 1979, the petitioner was granted permission by the Indian Oil Corporation to market SKO/LDO at Mohan Nagar as an outstation of their main Agency at Sahadara. In the year 1997/1998 a new District Gautam Budh Nagar was carved out of the parent Districts Bulandshahar & Ghaziabad. The operational area of the petitioner at Mohan Nagar was affected due to the creation of the new District. A request for Extension Point at Bistrakh, District Gautam Budh Nagar made by the petitioner, was accepted and approved vide letter dated February 5, 1998 for a period of one year (Annexure 2 to the writ petition). The petitioner was advised to select a suitable site and to obtain licence for marketing SKO at Bistrakh, District Gautam Budh Nagar. The petitioner applied for and licence was

granted by the District Supply Officer for the Extension Point at Bisrakh (Annexure3 to the writ petition). The petitioner installed an underground storage tank and a filling pump in pursuance of the Government Order and in compliance of letter dated 17111998 of District Supply Officer, Gautam Budh Nagar (Annexure4 to the writ petition). According to the petitioner he was given to understand that the Extension point at Bisrakh would be made permanent in due course of time and there will be no curtailment in the operational area.

3. The period of dealership of petitioner at Bisrakh was extended from time to time upto 3042001 by means of letters dated 281999, 2382000, 482000 and 132001 respectively (Annexures 6, 7, 8 and 9 to the writ petition). According to the petitioner in the month of April, 1999, 17 retailers of Bisrakh Block had lifted 60,300 litre of SKO from Bisrakh Extension Point. On 189 2000, the District Magistrate, Gautam Budh Nagar made a request through letter (Annexure11 to the writ petition) to the Principal Secretary for directing the Indian Oil Corporation to regularise the Extension Point situated in Gautam Budh Nagar. A similar request was made by the District Supply Officer to the Chief Divisional Manager, Indian Oil Corporation, Agra vide letter dated 3112000 (Annexure12 to the writ petition).

4. On 2382000 an advertisement was made by the Indian Oil Corporation in Hindustan Times and other newspapers inviting applications of dealership at Noida and Gautam Budh Nagar. The terms and conditions of advertisement precluded the petitioner from making an application for new dealership as he was already functioning within that area. According to the petitioner permanent dealership at Dhankaur Extension Point has been granted by the Indian Oil Corporation to Ramanand. The Bharat Petroleum Corporation Limited has granted permission to M/s. Ghaziabad Oil Traders, Ghaziabad for permanent Extension Point at Gautam Budh Nagar, taking into consideration the aspect that the said firm was supplying SKO in that area, since long. The contention of the petitioner is that area falling within Mohan Nagar, Ghaziabad presently forms part of District Gautam Budh Nagar, therefore, the act of respondents amounts to curtailment of petitioner's operational area. According to the petitioner he has invested a huge amount of more than Rs. 15 lacs for installation of Extension Point at Bisrakh and obtaining licence. The contention of the petitioner is that he having not violated any terms and conditions of the licence or the provisions of the Control Order, the curtailment of the operational area is against the principles of natural justice, equity and fair play. According to the petitioner no opportunity of hearing having been granted, the action of the respondents is against law and violative of Articles 14 & 16 of the Constitution of India.

5. The counteraffidavit of Alok Kumar, Deputy Manager (CONS) of Indian Oil Corporation Ltd. has been filed on behalf of the respondent Nos. 1 & 2. The contention of the respondents is that permission of installation of Extension Point was granted, as the respondents could not finalise the process to select eligible candidate through Dealer Selection Board as per the guidelines and norms laid

down by the Union of India, Ministry of Petroleum and Natural Gas, New Delhi. According to the respondents the grant of Extension Counter being for a limited period, no legal rights have accrued to the petitioner. The respondents have stated that the petitioner cannot continue after the selection of a regular dealer by the Dealer Selection Board to operate in the extended territory. The contention of the respondents is that extension in respect of certain area was granted purely on temporary basis in order to meet the immediate demand of the people living in that area. According to the respondents in relation to entire location of SKO/LDO dealership at Noida, District Gautam Budh Nagar, selection process is over and Shri Ashok Kumar has been selected and letter of intent and letter of appointment have been issued on 2501 and 25601 respectively (AnnexureCA 1 & 2). The respondents have stated that there is no dispute about the original area allocated to the petitioner. The respondents have stated that the licence granted to the petitioner being for a limited period and dealership in relation to the area in question having been finalised, the petitioner's claim to operate in the extended area is baseless. The contention of the respondent is that the licence of the petitioner having not been renewed after 30401, he cannot continue business at the Extension Point. About grant of permanent dealership to Ramnath Ramanand, it is stated that the said firm had no temporary Extension Point.

6. The petitioner has also filed rejoinder affidavit and supplementary affidavit reiterating the facts stated in the writ petition. The contention of the petitioner is that the consolidated fee of Rs. 5,000/ was deposited by him and the Licensing Authority having accepted the fee, the renewal was for all times till the licence was suspended or cancelled. According to the petitioner the licence is granted and renewed by the District Supply Officer under Clauses 6 & 8 of the Control Order, 1962 and the licence fee payable is prescribed under clause 10 of the said Control Order. The licence under the Control Order is extended from time to time, after the extension of the period of Extension Point by the Indian Oil Corporation. The licence under the Control Order would be continued by the District Supply Officer, if the Indian Oil Corporation permits its dealer to operate from the Extension Point after creation of a new district.

7. We have heard Shri Shyamal Narain, learned Counsel for the petitioner and Shri Prakash Padia, learned Counsel for the respondents and have gone through the record of the writ petition.

8. The learned Counsel for the petitioner argued that there is no legal bar in granting dealership at Extension Point, Bisrakh District Gautam Budh Nagar on permanent basis. The learned Counsel submitted that the petitioner has been discriminated in the matter of grant of dealership at Bisrakh Extension Point, whereas the other dealers who were granted temporary Extension Points have been permitted to continue the dealership on permanent basis. The petitioner's Counsel urged that stoppage of dealership at Bisrakh Extension Point would cause huge financial loss as the petitioner had invested considerable amount in

the installation of underground storage tank, filling pump, purchase of land and obtaining explosive licence and separate licence for Bisrakh Extension Point at District Gautam Budh Nagar. The learned Counsel laid emphasis on the point that there was no violation of the terms and conditions of licence or control Order. It was submitted that no opportunity of hearing having been granted before the stoppage of dealership at Bisrakh Extension Point, the impugned order is vitiated. The learned Counsel submitted that the operational area was curtailed due to the creation of new district Gautam Budh Nagar. The learned Counsel argued that the petitioner had no objection, in case other dealerships are given in the said area, yet his dealership in relation to the Extension Point has not been permitted to be continued.

9. The learned Counsel for the respondents argued that the dealership of Extension Point at Bisrakh, Gautam Budh Nagar was granted on temporary basis upto 30401 or till the appointment of new SKO/LDO dealer without any commitment for increase in the overall allocation of SKO. The learned Counsel argued that Shri Ashok Kumar has been selected and appointed as new SKO/LDO dealer in District Gautam Budh Nagar by virtue of letter of appointment dated 25601 (Annexure CA2). The learned Counsel for the respondents urged that Extension Point having been granted temporarily, no legal right enforceable by law has accrued to the petitioner.

10. We have taken into consideration the submissions raised on behalf of both the parties.

11. Indisputably on the request of the petitioner temporary Extension Point at Bisrakh, District Gautam Budh Nagar for SKO/LDO supply was granted initially upto 3111999 vide letter dated 521998 (Annexure2 to the writ petition). The relevant terms and conditions of the grant of dealership are reproduced below:

?Your request for temporary extension point at Bisrakh District Gautam Budh Nagar for SKO/LDO agency has been approved upto 31 0199 only. You are advised to select a suitable site and obtain necessary licence from DSO for the marketing of SKO at Bisrakh, District Gautam Budh Nagar. However, this temporary extension point granted to you is without any commitment for increase in the overall allocation of SKO to you.

It is informed to you that you will not have any right for extended area of operation/additional quantity of kerosene and the same has been granted to you for a temporary period only. The additional quantity of Kerosene released to you, if any, in the extended area should not be reckoned for future allocation of kerosene.?

12. It is evident from the contents of the letter (Annexure2 to the writ petition) that the grant of dealership of Extension Point at Bisrakh, District Gautam Budh Nagar was temporary and in the beginning the period of dealership was upto 3111999 only. The temporary extension point was granted without any commitment for increase in overall allocation of SKO to the petitioner. The

dealership was granted with specific condition that the petitioner will not have any right for extended area of operation/additional quantity of kerosene as the grant was for a temporary period only. The additional quantity of kerosene released for the extended area was not to be reckoned for future allocation of kerosene to the petitioner, who had agency of SKO/LDO in the Union Territory of Delhi with Headquarters at Anaj Mandi, Sahadara and an outstation at Mohan Nagar, District Ghaziabad. The period of dealership at Bistrakh Extension Point was extended uptill 30401 with intervals of 6 months. The last extension was for a period of 3 months i.e. upto 30401. The terms and conditions of the letters of temporary extension at Bistrakh (Annexure Nos. 5, 6, 7, 8 & 9 to the writ petition) provided that the temporary extension at Bistrakh was for a specified period of 6 months or 3 months or till the appointment of new SKO/LDO dealer in District Gautam Budh Nagar, whichever is earlier. The terms and conditions that the temporary extension point granted to the petitioner is without any commitment for increase in overall allocation of SKO and the petitioner shall have no right for extended area of operation/additional quantity of kerosene, were repeated in each letter issued by the Indian Oil Corporation, whereby granting extension of temporary extension point at Bistrakh, District Gautam Budh Nagar. The terms and conditions set out in initial grant as well as subsequent extensions reveal that the extension at Bistrakh Extension Point was temporary with clear understanding that the petitioner shall have no right for extended area of operation/additional quantity of kerosene. The dealership of extension point at Bistrakh being temporary and for a specific period or till appointment of new SKO/LDO dealer in District Gautam Budh Nagar, no legally enforceable right accrued to the petitioner to continue business of Petroleum Product from the extension point at Bistrakh, District Gautam Budh Nagar. The dealership having been granted for a limited period or till the appointment of new SKO/LDO dealer, after the appointment of new SKO/LDO dealer in the area in question, the petitioner has no right to operate from temporary extension point at Bistrakh, District Gautam Budh Nagar. The petitioner has SKO/LDO Agency in the Union Territory of Delhi with Headquarters at Anaj Mandi, Sahadara and an outstation at Mohan Nagar, District Ghaziabad. There is no curtailment in the operational area of the petitioner. The grant of dealership of licence at Bistrakh Extension Point not being permanent, the petitioner cannot claim that his operational area has been curtailed. The petitioner, an experienced dealer having dealership of SKO/LDO in the Union Territory of Delhi entered into an agreement with open eyes to supply kerosene from Bistrakh Extension Point purely on temporary basis and for limited period cannot turn round and say that he having invested huge amount, the temporary dealership at Extension Point Bistrakh be made permanent. By virtue of temporary grant of dealership for a limited period no right of business enforceable under the law, having accrued to the petitioner, the decision of the respondents not to grant further extension to the petitioner to operate at Bistrakh Extension Point cannot be said to be arbitrary, capricious or malicious.

13. In view of the foregoing discussions, we do not find any substance in the

submissions made on behalf of the petitioner. The writ petition fails and is dismissed with no order as to costs.

14. The interim stay order is hereby vacated.