
(2008) 05 AHC CK 0224
In the Allahabad High Court
Case No : C.M.W.P. No. 66608 of 2005

Shambhu Singh Deena Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-05-2008

Acts Referred:

Citation : (2008) 6 AWC 5771

Hon'ble Judges : V.M. Sahai, J; R.N. Misra, J

Bench : Division Bench

Advocate : Sunil Kumar and Amarjit Singh, for the Appellant; A.N. Shukla, Pankaj Rai and S.C., for the Respondent

Final Decision : Allowed

Judgement

V.M. Sahai and R. N. Misra, JJ.—The Petitioner was granted licence in the year 1984 in Form "C" of the U.P. High Speed Diesel and Light Diesel Oil (Maintenance of Supplies and Distribution) Order, 1981 (in brief Order, 1981). In paragraph 3 of the writ petition it has been mentioned that the licence of the Petitioner was renewed from time to time and was valid till 31st March, 2007. An inspection of the business premises of the Petitioner was made by the Supply Inspector on 28.12.2004. Sample was taken from the business premises of the Petitioner and sent for chemical examination on the same day. After receipt of the report from the chemical analyst, who reported that high speed diesel sample fails to meet the B.I.S. specification, a show cause notice was issued to the Petitioner on 6.8.2005, the licence of the Petitioner was suspended and one week's time was allowed to submit reply to the show cause notice. According to the Petitioner alongwith show cause notice, chemical analyst's report was not supplied to the Petitioner. The Petitioner approached District Supply Officer, Bulandshahr for supplying a copy of the report, which was received by the Petitioner on 11.7.2005. The Petitioner prayed before District Supply Officer that sample be again sent for re-testing as inspection was not carried by an officer, competent to carry out the inspection. It is not disputed by the Petitioner that his business

premises is lying closed with effect from 6.8.2005 and since then the Petitioner's licence has been suspended.

2. We have heard Sri Amarjit Singh learned Counsel for the Petitioner and Shri A. N. Shukla learned standing counsel appearing for the Respondents.

3. Shri Amarjit Singh learned Counsel for the Petitioner has urged that the business premises of the Petitioner was inspected by the supply inspector on 28.12.2004 and he took sample and sent it for testing to the chemical analyst. According to the learned Counsel the supply inspector has no power or authority to inspect the business premises of the Petitioner or to take sample and send it for chemical examination. It was only the District Supply Officer and other officers mentioned in clause IV (A) of the Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractices) Order, 1998 (in brief Order 1998), who were authorised to inspect the business premises of the Petitioner. According to the learned Counsel for the Petitioner, the entire proceeding of inspection and taking sample and sending it for testing to the chemical analyst was without jurisdiction.

4. On the other hand, learned standing counsel has vehemently urged that since a licence was granted to the Petitioner under Order 1981, it has been renewed from time to time, therefore, the authorities mentioned in Clause 18 of the Order, 1981 would be entitled to carry out inspection and take sample and send it for chemical examination. He further urged that under Order, 1981 the definition specifies that a dealer would not include an oil company and any other person who is engaged in business of purchase, sale or storage of high speed diesel would be a dealer. Under Order, 1998 the definition of dealer is different. Under Order, 1998 a person appointed by an oil company to purchase, receive, store and sell motor spirit and high speed diesel would be a dealer. According to the learned Counsel for the Petitioner under Order, 1981 oil company was not a dealer but under Order, 1998, a person appointed by the oil company is a dealer. He has urged that since the Petitioner was appointed as petty diesel dealer under licence granted by the District Magistrate/Collector, he would not be a dealer and the provisions of Order 1998 would not apply to it.

5. By Clause 8 of the Order, 1998 the Motor Spirit and High Speed Diesel (Prevention of Malpractices in Supply and Distribution) Order, 1990 (In brief Order, 1990) was repealed. It is not disputed by the learned standing counsel that Order 1990 has been repealed by order 1998 and the oil company did not have high speed diesel oil retail dealers (petty diesel dealer), therefore, the State Government framed a policy for appointment of petty dealers so that of high speed diesel oil could be made available in rural areas of the State where the oil companies had not yet appointed any dealer or has opened a retail diesel outlet. Looking to the problem faced by the villagers, petty diesel dealer licences were issued by the State Government under its policy to benefit the farmers of the villages because the retail outlet appointed by the oil companies were at far off places. The Government order was issued on 25.10.1987, to all District

Magistrates of the State that under Order 1981 for appointment of petty diesel dealer by the District Magistrates and under this policy of the Government petty diesel dealers were appointed and continued. Almost similar Government order was issued by the State Government on 2nd August 2000. By another Government order dated 3.2.2001 the State Government circulated a format for grant of petty diesel dealer licence/ renewal of the licence on certain conditions. The format also mentioned that licence/renewal had to be made under Order 1981. Another Government order No. 129/29-7-2003-1 PP/2000 dated 17.1.2004 was issued by the State Government to all the District Magistrates that since the guidelines issued by the Central Government known as Marketing Discipline Guidelines 2001 had been issued, therefore, in supersession of the earlier Government order dated 25.4.1997, the State Government has taken a decision that all pumps be inspected by a team which consists of an Executive Magistrate or an officer not below the rank of District Supply Officer and other member shall also not be below the rank of Inspector. Officers of the oil company or District Co-ordinator or officer of the oil company would also be made party of the team. The officers of oil company would be entitled to carry out inspection also of authorised petrol/ diesel pumps for carrying out the inspection. It is necessary to extract the relevant part of the Government order as under:

other language

6. From the Government order, it is clear that petty diesel dealer's premises could be inspected either by the Executive Magistrate or by an officer not below the rank of District Supply Officer and an Inspector would be member of the team along with District Coordinator of Oil Corporation. Since in this case, the Petitioner's premises was inspected only by the Supply Inspector he was not accompanied either by Executive Magistrate or by an officer not below the rank of District Supply Officer, therefore, in view of Government order dated 17.1.2004 the inspector alone was not authorised to carry out the inspection of the business premises of the Petitioner or to take sample and send it for chemical examination. Therefore, we are of the considered opinion that inspection of business premises of the Petitioner on 28.12.2004 by the supply inspector only was wholly illegal and without jurisdiction and supply inspector had no power to inspect the business premises of the Petitioner or to take sample or to send it for chemical examination. Hence all the proceedings taken against the Petitioner in pursuance of inspection dated 28.12.2004 are without jurisdiction and on the basis of such an inspection the licence of a petty diesel dealer of the Petitioner could not be suspended or cancelled by the Respondent.

7. For the aforesaid reasons, the writ petition succeeds and is allowed. The impugned suspension order dated 6.8.2005 (Annexure-3 to the writ petition) as well as cancellation order dated 3.10.2005 (Annexure-1 to the supplementary affidavit) passed by the District Supply Officer cancelling the petty diesel dealer licence of the Petitioner is quashed. A writ of mandamus is issued to Respondents to renew the licence of the Petitioner within three weeks from the

date a certified copy of this order is produced before Respondent No. 2. Respondent No. 3 is directed to resume supply of the Petitioner forthwith.