
(2012) 03 GAU CK 0071
In the Gauhati High Court
Case No : WP (C) No. (SH) 269 of 2010

Shri Rakesh G Momin

APPELLANT

Vs

The State of Meghalaya

RESPONDENT

Date of Decision : 02-03-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Meghalaya Kerosene (Licensing and Distribution) Control Order, 1988 — Order 10,
Order 9

Citation : (2012) 03 GAU CK 0071

Hon'ble Judges : Subhasis Talapatra, J

Bench : Single Bench

Advocate : AH Hazarika, Mr. A Medok, for the Appellant; ND Chullai, Sr GA, for the Respondent

Final Decision : Allowed

Judgement

S. Talapatra

1. By this petition as filed under Article 226 of the Constitution of India, the petitioner has challenged the order of cancellation of his SK Oil Licence issued under Memorandum No.EGH/SUP.39/2010/1-A dated 24.8.2010 (Annexure XIV) by the Deputy Commissioner(Supply), Williamnagar, and also prayed for a direction for renewal of his licence from the year 2010 onwards. The petitioner had also approached this Court previously by filing a writ petition being WP(C) No.(SH)22 of 2009 challenging the order dated 21.12.2009. The operative part of the said order dated 21.12.2009 is reproduced hereunder:

In the interest of public Service and based on their constant complain lodged in the Office, the SK Oil Licence which was issued to you earlier vide Licence No.4, dated, Williamnagar the 7th December 2001 is hereby cancelled from the dealership of Sub-Agents, Rongjeng SK Oil Depot from today the 21st December 2009.

2. In the previous writ petition the challenge was fundamentally based on non-affording of opportunity before issuance of the said order of cancellation. This Court on consideration of the materials disposed the writ petition by order dated 9.4.2010 holding inter-alia:

Mr AH Hazarika, the learned counsel for the petitioner however, states that if such an order is passed, the petitioner should be allowed to continue to operate the dealership in question pending final decision taken by the respondent No.3. In my opinion, both the submissions made by the learned counsel for the private respondent and the learned counsel for the petitioner appear to be quite reasonable. Under the circumstances, this writ petitioner is allowed with the following directions:

(1) The impugned order dated 21.12.2001 at Annexure III issued by the respondent No.3 is hereby quashed.

(2) The respondent No.3 shall reconsider the question of allotment of dealership after giving adequate opportunity of hearing to the petitioner as well as the private respondent and take a decision thereon within one month from the date of receipt of this judgment.

(3) Till the time a decision is taken by the respondent No.3, the respondent No.3 shall allow the petitioner to operate the dealership in question.

(4) The parties are directed to bear their respective costs.

3. In consequence to the said direction as contained in the said order dated 9.4.2010 passed in WP(C) No.(SH)22 of 2010, the Deputy Commissioner(Supply), East Garo Hills District, Williamnagar, vide communication dated 9.7.2010, as available in Annexure VII, asked the petitioner to appear before him on 15.7.2010 with all relevant papers pertaining to his Sub-Agents, SK Oil Depot, Rongjeng, prior to issuance of storage and distribution licence issued to him by the said Deputy Commissioner(Supply) and all papers of the Gauhati High Court, Shillong Bench for claiming dealership. Thereafter by another communication dated 15.7.2010 as available in Annexure VIII, the said Deputy Commissioner (Supply) asked the petitioner to produce the following particulars:

(1) Appointment letter issued in the year 2001

(2) Lifting report of SK Oil w.e.f. April, 2009 to June, 2010

(3) No Objection Certificate from the village/area Nokma with statement

(4) Support/NOC from the concerned SK Oil dealers

(5) Particulars of Gauhati High Court, Shillong Bench.

4. In response to those communications under a covering note dated 15.7.2010, the petitioner produced all the documents as asked for by the said Deputy Commissioner and the said forwarding report dated 15.7.2010 is available at

Annexure IX to the writ petition. In addition thereto the petitioner made a representation to the said Deputy Commissioner (Supply) on 16.7.2010, projecting his case in a brief manner and the said representation dated 16.7.2010 is available at Annexure XI to the writ petition. Thereafter, the petitioner was served with a notice to appear before the said Deputy Commissioner (Supply) on 23.7.2010 along with documents as mentioned in the communication dated 15.7.2010. After the purported hearing, the said Deputy Commissioner (Supply) by order under No. EGH/SUP.39/2010/1-A dated 24.8.2010, returned the following finding at paragraph 4 of the said order, which is reproduced for elucidation hereunder:

4. It seems that Shri Rakesh G Momin has submitted the list of 35(thirty five) SK Oil dealers who were supporting him. Whereas the applicant Shri Prillingston Sangma cannot produce the SK Oil dealers and submits that since Rakesh G Momin is the existing dealer he is exerting undue pressure on the SK Oil dealers. He also represented that the Block Development Officer Rongjeng Block has already indicted Shri Rakesh G Momin on the basis of a series of complaints and has expressed approval for Shri Prillingston Sangma.

In view of the above it is stated that a just fair and reasonable opportunity has been given to both petitioners Shri Rakesh G Momin and the applicant Shri Prillingstone Sangma. However, it cannot be conclusively determined which of the dealer is eligible for the dealership of SK Oil sub depot at Rongjeng.

After careful and meticulous examination of reports and documents and due consideration it is decided that the dealership and licence may not be extended to Shri Rakesh G Momin neither to the applicant Shri Prillingston Sangma.

The office of the Deputy Commissioner (Supply) has decided to call for a fresh tender for the SK Oil Sub Depot at Rongjeng for which applications will be sought and dealership and licence granted on merit and eligibility to suitable candidates.

(Emphases added)

5. The said order dated 24.08.2010 is impugned in this writ petition. It is evident from the order of cancellation dated 21.12.2009 as available in Annexure II to the writ petition, that the dealership of the petitioner was cancelled on the basis of the complaint lodged in the Office of the Deputy Commissioner (Supply). For cancellation of the dealership the power of the Deputy Commissioner (Supply) has been provided in the Order 10 of The Meghalaya Kerosene (Licensing & Distribution) Control Order, 1988. It is evident from Rule 10 that:

no holder of a licence or his agent or servant or any person acting on his behalf shall contravene any of the terms or conditions of licence and the provision of this order and if such holder, agent, servant or other person contravenes any of the said terms or conditions or provision then, without prejudice to any other action that may be taken against him, his licences has been given a reasonable opportunity of stating his case against the proposed cancellation or suspension.

6. As evidenced, no prior notice affording any opportunity was given to the petitioner, even such denial is manifest in the order of cancellation dated 21.12.2009. There is no allegation of violating any terms and conditions of the said licence or provisions of the said Control Order, 1988. On consensus this Court vide order dated 4.9.2010 passed in WP(C) No.(SH)22 of 2010 directed the Deputy Commissioner(Supply) to afford the petitioner adequate opportunity of hearing before taking a decision with regard to cancellation of the licence. In short, this Court directed the Deputy Commissioner (Supply) to take a fresh decision whether the order of cancellation would be maintainable or not. The Deputy Commissioner (Supply), providing the opportunity, issued two communications dated 9.7.2010 and 15.7.2010 available at Annexure VII and VIII to the writ petition but nowhere the allegation of the breach of conditions of the licence or violation of any provision of the said Control Order, 1988 has been made, only some documents, statements and Court papers were asked from the petitioner. The petitioner had duly furnished all those documents in strict compliance to the said direction. From the findings as returned by the said Deputy Commissioner (Supply), it also surfaces that all the existing dealers seconded the dealership of the petitioner though one person namely Shri Prillingston Sangma, who failed to produce any support from any SK Oil dealers alleged without any basis whatsoever that the petitioner exerted undue pressure on the SK Oil dealers for obtaining their support. However, in the order of cancellation, it was stated that there had been complaints by the SK Oil dealers against the petitioner. By the findings, that issue has been cleansed without leaving any space for doubt. Even thereafter, the Deputy Commissioner (Supply) has decided not to extend the licence to the petitioner. The said Deputy Commissioner expressed intent for calling the fresh tender for the SK Oil Sub-Depot at Rongjeng and to settle the dealership accordingly. Even for refusing the extension of licence, the licensing authority must assign reasons for such refusal to grant or renew the licence. The provisions as laid down in Order 9 of the said Control Order, 1988, are extracted hereunder:

9. Power to refuse licence-The licensing authority may, after giving the dealer concerned an opportunity of stating his case and for reasons to be recorded in writing, refuse to grant or to renew a licence.

7. The reasons as recorded by the Deputy Commissioner (Supply) cannot be held as reasons for refusing extension of licence by way of renewal. The decision as taken is ex-facie capricious in nature and arbitrary and the said decision as contained in the impugned order dated 24.8.2010 cannot survive the test of Article 14 of the Constitution of India. Discretion of the licensing authority is regulated by the provisions of the said Control Order. As corollary to that rule it has to follow that caprice cannot take place of discretion.

8. Learned counsel for the petitioner contended that the impugned action of the respondent No.3 - Deputy Commissioner (Supply) is without any reason and beyond his authorities as stated and as such the impugned action is liable to be

interfered with. Learned counsel for the petitioner referred a decision in M/s Lallamookh Tea Co.(P)Ltd vs Commissioner of Taxes as reported in (1993) 1 GLR, 467, where this Court held that the non-disclosure of the reasons and grounds with material facts in the notices having deprived reasonable opportunity to the petitioners to meet the allegation effectively, the proceedings are vitiated for violation of principles of natural justice. In this case, respondent No.3 did not provide any basis of cancellation or non-extension of the SK Oil licence of the petitioner having regard to the provision of the said Control Order, 1988. However, the petitioner had produced all records as asked by the respondent No.3. Even thereafter, the impugned decision has been taken in violation of the principle of fair play. Learned counsel for the petitioner referred another decision of this Court in Salam Usha Sinha vs State of Manipur and others as reported in (1994) 2 GLR 337, where this Court held that any order which is likely to be detrimental to the interest of the petitioner must be passed after reasonable opportunity of hearing. The petitioner in this case never knew what is the allegation against him and what is the basis of the proposed action of cancellation or the non-extension of his licence. As such, there was a clear denial of the principles of natural justice and the action so impugned in this writ petition cannot be defended for being capricious and arbitrary.

9. On the other hand, Mr Chullai, learned senior GA, quite emphatically submitted that this Court in a proceeding under Article 226 of the Constitution of India should not act as a Court of appeal. The scope of judicial review in the matter of whether a licence should be allowed to continue or not, or whether the licence should be cancelled or not, is very limited as the discretion of the licensing authority has been fortified by the legal provisions. Learned senior GA, urged that for protecting the public interest the impugned decision has been taken by the respondent No.3 and as such this Court should not interfere with the said decision. Further the learned senior GA submitted that no mandamus can be issued by this Court directing the respondents to grant or extend the licence by way of renewal or otherwise. There is no doubt if in a case it is found that all the relevant considerations germane to the issue of grant or extension of the licence have been taken by the competent authorities and the principles of natural justice has been scrupulously adhered to, this Court would not exercise its jurisdiction under Article 226 of the Constitution of India for judicial review of the administrative action. But in the case in hand, what has emerged is that initially the respondent No.3 ordered cancellation of the licence and the Court interfered and quashed that order for not affording the opportunity of hearing and thereafter he resorted to pre-decisional proceeding but no show cause was issued to the petitioner communicating the grounds of the proposed action. From the impugned order dated 24.8.2010 as available at Annexure XIV to the writ petition, it is apparent that the final decision as was taken by the respondent No.3 was not to extend the licence of the petitioner and to go for a fresh process of selecting the new dealer for the Rongjeng block. Therefore, the final consideration was for refusal of the renewal of the licence of the petitioner and

no grounds for his refusal was communicated to the petitioner conforming to the provisions of the Order 9 of the said Control Order, 1988. Learned senior GA, raised a very strange question that after 2001 there had been no renewal of the licence of the petitioner and thus the licence has to be considered lifeless and stale. While making such submissions he was oblivious of the documents as submitted by the petitioner to the Deputy Commissioner (Supply) and as appended to the writ petition as Annexure XII(A) dated 11.2.2010, which is the allotment of SK Oil for the month of January 2010, Annexure XII (B) dated 16.3.2010, which is the allotment of SK Oil for the month of February 2010, Annexure XII (C) dated 13.4.2010, which is the allotment of SK Oil for the month of March 2010, Annexure XII (D) which is the allotment of SK Oil for the month of April 2010, Annexure XII (E) which is the allotment of SK Oil for the month of May 2010 and Annexure XII (F) which is the allotment of SK Oil for the month of June 2010. All these documents demonstrate that the licence of the petitioner was very much in force till 2010 and on the basis of which the allotment of SK Oil used to be made month wise to the petitioner.

10. On aggregate consideration of the materials and on examination of the impugned order dated 24.8.2010, this Court is of the opinion that the writ petitioner was deprived of the opportunity of stating and the impugned order has been issued without any basis whatsoever as the communications so made do not demonstrate any breach and violation of the conditions of the licence or any allegations of disregarding the provisions of the said Control Order, 1988. As such the impugned order dated 24.08.2010 is liable to be interfered with. The impugned order dated 24.8.2010 available at Annexure XIV to the writ petition stands quashed.

11. Situated thus, the respondent No.3 Deputy Commissioner(Supply), East Garo Hills District, Williamnagar, is directed to consider the renewal of the licence of the petitioner (Annexure I to the writ petition) within one month from the date of receipt of the certified copy of this order. Till such consideration is made, the petitioner shall be allowed to continue his dealership as per the terms and conditions of the licence at Annexure I to the writ petition and in compliance with the provisions of the Meghalaya Kerosene (Licensing & Distribution) Control, Order, 1988.

12. With these observations and directions the writ petition stands allowed. No order as to costs.