(1994) 04 PAT CK 0047

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 12040 of 1992

Swarup Chand Jain APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 19-04-1994

Acts Referred:

Bihar Motor Spirit and High Speed Diesel Oil Dealers Licensing Order, 1966 — Section 12
Essential Commodities Act, 1955 — Section 7

Citation : (1994) 04 PAT CK 0047

Hon'ble Judges : U.P. Singh, J

Bench : Single Bench

Advocate : N.K. Agrawal and Ashok Kumar Jain, for the Appellant; Ram Awadhesh Singh, for State, Abhay Kumar Singh, Devendra Kumar Sinha, Rai Ramesh Prasad, Ram Bilash Roy Raman for intervenor and Ajoy Kumar Tripathy, for the Respondent

Final Decision : Allowed

Judgement

U.P. Singh, J.—In this writ application, the Petitioner has challenged the impugned orders contained in Annexures 4 and 5, namely, the orders passed by the District Transport Officer and the Appellate Authority dated 3.6.1992 and 21.10.1992, respectively. By the impugned order passed by" the District Transport Officer dated 3.6.1992, the licence granted to the Petitioner under the provisions of the Bihar Motor Spirit and High Speed Diesel Oil Dealers'' Licensing Order (hereinafter referred to as "the Licensing Order") has been cancelled and the same has been affirmed by the order passed by the Transport Commissioner, the appellate authority, on appeal preferred by the Petitioner.

2. The Petitioner is carriying on business as a dealer under the Licensing Order having Licence No. 8/1970 in the name and style "M/s Jain Petrol Supply Company". He carries on business as a dealer of petrol and diesal since the year 1970 and the licence fee for the year 1991-92 was deposited within time vide chalan No. 15 dated 14.12.1990 and chalan No. 53 dated 27.12.1991 and after

depositing the necessary licence fees, the Petitioner filed an application in the office of the District Transport Officer, the licensing authority, for renewal of his licence. It was not communicated to the Petitioner that his licence for the year 1991-92 had not been renewed.

3. On 7.2.1992, inspection of the petrol pump in question was made by the Executive Magistrate, Gaya, along with the Supply Inspector and the Deputy Controller, Weights and Measures, at about 5 P.M. A dip rod method was used by the authorities for the purpose of measuring the petrol and diesel available in the tank in the petrol pump. A difference was found between the opening stock mentioned in the Stock Register of petrol and Diesal and the stock of petrol and diesal available in the tank of the petrol pump to the tune of 1033 litres of petrol and 304 litres of diesel. Accordingly, the Petitioner was directed by an order dated 7.12.1992 under the signature of the Executive Magistrate and the Deputy Controller of Weights and Measures to close the sale of petrol and diesal and subsequently, a first information report was lodged against the Petitioner u/s 7 of the Essential Commodities Act. At the time of the inspection, the Manager and the representative of the Petitioner were present and they assisted the Executive Magistrate at the time of inspection. The Stock Register, Cash memos, etc., were produced. A copy of the prosecution report has been enclosed as Annexure-1.

4. On the basis of the inspection, a show cause notice was served on the Petitioner which has been issued by the District Transport Officer, the Licensing Authority inter alia, asking the Petitioner to show cause as to why his licence be not cancelled on the ground of the shortage found in the stock of petrol and diesel and further that the Manager had fled away with the Stock Register, Sale Register and Cash memos. The Petitioner filed a show cause stating that there was no violation of the provisions of the Licensing Older and the allegations were made on the basis of suspicion and surmises. The allegation that the Manager fled away with the Registers was false. The dip rod method was not legally permissible. But the District Transport Officer, by his order dated 31.3.1991 cancelled the licence of the Petitioner on the ground that the show cause was not satisfactory. This order was challenged in a writ application before this Court in C.W.J.C. No. 3298 of 1992 and, by order 29.4.1992, the cancellation order was quashed with a liberty to the Licensing Authority to pass appropriate orders in accordance with law.

5. Thereafter, the Licensing Authority, the District Transport Officer, issued Anr. show cause notice asking the Petitioner to show cause why the licence be not cancelled on the grounds mentioned therein. A copy of the show cause notice has been enclosed as Annexure-3. In reply, the Petitioner submitted that there was no variation in the stock of the diesel and petrol and any variation present at the time of the inspection was within the permissible limit and petroleum products being a liquefied substance, variation of 4% of a stock is permissible. The petrol and diesel available in the tank of the Petitioner was not verified in accordance with the requirements, that is, actual verification of the stock. The method

adopted was only use of a dip rod method which gives an approximate idea of the stock but not the actual availability in the stock. Admittedly, the inspection was made at about 5 P.M. during the office hours and the alleged shortage found in the business premises was due to the sales of the day. By order dated 7.2.1992, the Petitioner was directed to get the dispensing unit (delivery pump of the petrol and diesel) properly checked up by a mechanic. The Petitioner informed the Bharat Petroleum Corporation Ltd., Paina, for sending a trained mechanic for checking the dispensing pump. In pursuance thereof, on 14.2.1992, the mechanic of the Bharat Petroleum Corporation Ltd. checked the machines of the petrol pump of the Petitioner, including the dispensing pump and removed the defects. Thereafter, the Petitioner deposited the necessary fees with the Weights and Measures Department for checking of the petrol and diesel pump and in pursuance of the same, on 13.3.1992, the officers of the Weights and Measures Department inspected the business premises and found both the dispensing pumps in order. It was, accordingly, stamped as required under the Weights and Measures Act and the rules. A copy of the certificate granted by the Bharat Pertoleum Corporation Ltd., as also by the Weights and Measures was enclosed along with the show cause. The allegation that the Manager of the Pump fled away along with the Registers was totally false. The truth of the matter is that no one fled away from the spot and everything was done according to the will and desire of the Executive Magistrate, who after inspection, handed over a copy of the inspection note and a letter to the representatives of the proprietor. Further the said Executive Magistrate had himself put his signature on the Stock Register. The Executive Magistrate and the officer accompanying him were requested to inspect the Stock Register, Sale Register and the Cash memos which had been issued up to the time of the inspection but the inspecting party took no care of it and they acted in hot haste and not a single paper, document or register were surreptitiously taken away by any Manager of the firm. All these were available for inspection and no discrepancy could be detected in those papers. This allegation made against the Petitioner that the papers were removed by him was totally false and baseless. The clinching evidence to disprove the allegation is that the Manager attending the inspection put his signatures on the papers as required by the raiding party. The Petitioner was regularly furnishing his returns in terms of condition No. 5 and the Petitioner was riot in a position to produce receipts for submission of returns since there was no such practice in issuing receipts in the office of the District Transport Officer. In so far as non-furnishing of the information in respect of fixation of quota by the Oil Company is concerned, the Petitioner could not furnish such information since the quota had not been fixed by the Oil Company (sic) regard to adulteration found in the petrol on examining it through the filter paper, the Petitioner contended that the examination of adulteration in petrol by a filter paper is not a perfect method and the manner and the method of examination of petrol is prescribed but the inspecting party did not follow the same.

6. The District Transport Officer cancelled the Petitioner''s licence on the ground

that there was discrepancy in the stock of petrol and diesel and that the Manager did not co-operate in furnishing the returns as also the required information and, further, that all examination through the method of filter paper the petrol was found adulterated. The impugned order is contained in Annexure-4. The appeal preferred before the Transport Commissioner was dismissed and the appellate order is contained in Annexure-5.

7. The Petitioner has challenged the validity of these orders cancelling the Petitioner''s licence as arbitrary and malafide exercise of power. On a bare perusal of the show cause notice contained in Annexure 2, it is obvious that the proceeding for cancellation of the Petitioner''s licence was initiated by the District Transport Officer on two grounds; (i) shortage in the stock and (ii) fleeing away of the Manager. It has been pointed out that the same was challenged in a writ application and the orders were quashed but since the liberty had been granted to the licensing authority to issue a fresh show cause notice, Anr. show cause notice was issued adding fresh grounds which are contained in Annexure-3. It may be pointed out that neither in the prosecution report nor in the first show cause notice any allegation of adulteration in the petrol was levelled against the Petitioner but in the second show cause notice, it was so added. It was further contended that the Executive Magistrate was not authorised to make inspection under Clause (12) of the Licensing Order and therefore, the inspection and the proceeding initiated on that basis were arbitrary and illegal.

8. It may be mentioned that the Transport Commissioner-cum-Petrol/Diesel Controller, Bihar, had issued a direction to all the District Magistrates regarding inspection of diesel pumps stating therein that whenever the stock of diesels verified through mathematically, calliberated Machine (dip rod method), the discrepancy in the stock is natural and, as such, before taking any action against the dealer, the inspection be made through the officers of the Oil Companies. The said direction is contained, in Annexure-8. Similarly, the Bharat Petroleum Corporation Ltd. and the Indian Oil Corporation Ltd. has issued directions in relation to measurement of oil from Storage tank and tease directions are contained in Annexures 9 and 10. It further appears that, by a notification G.S.R. No. 22 dated 21.7.1989 the exemption was granted to dealers for issuing cash memos in case of sale of a commodity upto Rs. 25/- and in case'' of sale of more than one commodity upto Rs. 50/- unless the cash memo is demanded by the purchaser.

9. Admittedly, the Petitioner was appointed as a dealer by the Bharat Petroleum Corporation Ltd. nearly 30 years back to run a petrol pump and since then he is carrying on the business without any complaint whatsoever. He had already deposited the renewal fees for the year 1993. It appears that the Bharat Petroleum Corporation Ltd. terminated/cancelled the dealership agreement for the reason that the licence of the Petitioner had been cancelled. It appears that on 15.7.1993, M/s Bharat Petroleum Corporation Ltd. has appointed one Shailendra Kumar as a temporary dealer for running the petrol pump in question

and admittedly the licence has been issued in his favour by the District Transport Officer on 19.7.1993 but the said licence has been granted subject to the decision of this Court in the writ application and the relevant extract, of the order is in the following terms:

The licence is granted conditionally to Shri Shailendra Kumar subject to the decision of the Hon''ble High Court in C.W.J.C. No. 12040 of 1992 which will be binding on the new licensee Shri Shailendra Kumar.

The facts are not in dispute that, on 15.7.1993, M/s Bharat Petroleum Corporation Ltd. cancelled the dealership granted in favour of the Petitioner and on 15.7.1993 itself, the same day, M/s Masaurhi Service Station was appointed as a temporary dealer of the petrol pump in question. The possession of the petrol pump was taken from the Petitioner on 16.7.1993 and on 16.7.1993 itself the possession was granted to M/s Masaurhi Service Station. As stated above, the temporary/conditional licencs was granted in favour of Shri Shailendra Kumar of Masaurhi Service Station on 19.7.1993. It is also not disputed that the Petitioner had deposited the necessary licence fees for renewal of the licence in question and had deposited the necessary licence fees till the year 1993 after following the necessary requirements for renewal of the licence well within the time.

10. In the counter-affidavit filed by the District Transport Officer, these facts have not been disputed and the allegation made in the second show cause has been reiterated, such as, discrepancy in the stock of petrol and diesel, non-furnishing of the informations and non-production of papers and adulteration on examination of petrol with filter paper. It has been accepted that the Petitioner had deposited the licence fee in time but then it is stated that his application for renewal was incorrect and incomplete and, therefore, the question of renewal did not arise. In other words, it was alleged that the Petitioner had to file an application for renewal in form for which a necessary certificate from the Oil Company is mandatory but the same was not furnished and, so, the application was kept pending.

11. The newly added Respondent No. 5, namely, the Bharat Petroleum Corporation Ltd., has taken the stand in its counter-affidavit that the petrol pump in question is a company owned retail outlet and the Petitioner has no right in the same except that of an agent of the company. It was alleged that in the year 1988, an inspection was carried out by the company and certain variations were found in the stock which was beyond the permissible limits for which the dealer was duly warned by a letter dated 3.11.1989. By Anr. letter dated 11.9.1991 certain complaints were brought to the notice of the Petitioner against proper running of the retail outlet and these were the reasons for the company to terminate the dealership. It was contended that the order of termination of the dealership was not passed because of the termination of the licence by the authority.

12. On close scrutiny of the facts, there is no doubt in my mind that the second show cause notice (Annexure 3) in to deuced many grounds merely because this Court, while quashing the earlier order had left open the liberty to the licensing authority to pass appropriate orders in accordance with law. It is pertinent to notice that the second show cause is also based on the same inspection report on the basis of which the first show cause had been is sued. Therefore, it appears that, although on the basis of the said inspection report, only two grounds were raised against the Petitioner for showing cause, namely, shortage in the stock and non-production of registers, the same having been quashed by this Court, the second show cause was based on the same inspection report and several grounds were raised in the second show cause contained in Annexure 3. Therefore, the obvious conclusion is that all these grounds were non-existent and are imaginary since they did not form part of the inspection report on the basis of which earlier only two grounds were founded against the Petitioner. The second show cause pointed out the same infirmities, namely (i) that condition Nos. 1 and 2 have been violated without stating as to the nature of the violation and, therefore, it is obviously too vague; and (ii) the shortage in the stock of petrol and diesel which was found on measurement of stock by a dip rod method. The use of dip rod method gives an approximate idea of the stock and not the actual availability in the stock.

13. On consideration of these facts, it is obvious that the District Transport Officer initiated the proceeding for cancellation of the Petitioner''s licence on non est grounds not substantiated by any cogent evidence; rather they were based on flimsy grounds, imaginary and concocted and the entire proceeding was initiated on vague asseration. The Executive Magistrate was not authorised to make inspection of the premises u/s 12 of the Licensing Order and this vitiated the inspection itself. The appeal was dismissed "by the Transport Commissioner without application of the independent mind and affirming the illegal order of the District Transport Officer and, therefore, it suffers from, the same infirmity. The licence of the Petitioner was cancelled, not on account of any laches on the part of the Petitioner and the petrol pump is closed for the last one year for the reason that the Petitioner''s licence had been cancelled. Therefore, closing of the petrol pump was not for any other reason but was based on the fact that, since the licence had been cancelled and it has been demonstrated above how it was cancelled and the same day how and in what manner it was granted to one Shailendra Kumar, a temporary dealer for running the petrol pump in question. Since it has been found that the order of cancellation of the Petitioner''s licence was arbitrary, and illegal, the licence of the Petitioner will automatically revive, and he would be entitled to carry on the business in petrol and diesel in accordance with the dealership agreement. M/s Bharat Petorleum Corporation terminated the dealership agreement only because the licence of the Petitioner had been cancelled. It has already been pointed out that the temporary licence granted to the said Shri Shailendra Kumar as a temporary dealer was subject to the decision of this Court in this writ application. The facts enumerated above

leave no room for doubt that the temporary dealership granted to Sri Shailendra Kumar of M/s Masaurhi Service Station was in collusion with the local administration. M/s Bharat Petroleum Corporation Ltd. acted in arbitrary manner because on 15.7.1993 the Corporation cancelled the dealership granted in favour of the Petitioner and the same day itself Shri. Shailendra Kumar of M/s Masaurhi Service Station was appointed as a temporary dealer of the petrol pump in question. The possession of the petrol pump i was taken from the Petitioner on 16.7.1993 and the same day itself the possession was granted to Shri Shailendra Kumar of M/s Masaurhi Service Station. A temporary licence was then granted to Shri Shailendra Kumar of M/s Masaurhi Service Station on 19.5.1993 but, as stated above, the temporary licence was granted conditionally and subject to the decision of this Court in this writ application which was stated in the order passed by the District Transport Officer itself that the said decision will be binding on the new licensee Shri Shailendra Kumar. The Petitioner had been regularly depositing the necessary fee for renewal for the licence of the petrol pump in question till the year 1993 after following the necessary requirements for renewal of the licence well within time.

14. For these reasons, the orders contained in Annexures 4 and 5 are quashed and this application is allowed but without any order as to cost.

