
(2005) 05 AHC CK 0028
In the Allahabad High Court
Case No : C.M.W.P. No. 16325 of 2001

Yogendra Kumar Virendra Kumar and Others	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 27-05-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)
Essential Commodities Act, 1955 — Section 3
Petroleum Rules, 1976 — Rule 2

Citation : (2006) 7 ADJ 65 : (2005) 4 AWC 3133

Hon'ble Judges : Sanjay Misra, J; Amitava Lala, J

Bench : Division Bench

Advocate : Ramendra Asthana and V.K. Ojha, for the Appellant; Abhinav Upadhaya, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Amitava Lala, J.—The writ petitioners made this petition for the purpose of quashing of the Government order dated 4.1.2001 so far as it relates to condition No. 1, order dated 6.9.2000 and order dated 13.5.2000. They have further prayed that respondents and their subordinates be directed not to interfere with the right of the petitioners to transport High Speed Diesel Oil from retail outlet to their business premises by utilizing services of the oil tankers as per Form IX prescribed under the Petroleum Rules, 1976. Conditions under Form IX are as follows :

(i) Transportation of High Speed Diesel Oil through a tanker holding a licence in Form IX under the Petroleum Rules, is very safe as these licences are issued only after, certificates are issued by the Agni Shaman Adhikari (i.e., Fire Prevention Officer).

(ii) Transportation price is lesser in case of transportation by these tankers as compared to that of tractor trolleys.

(in) Contents of the tankers are insured where as in case of tractor trolleys every time this is not so.

(iv) That there is calibration of Oil contents in a tanker which is not so in case of diesel oil being transported by any other mode.

(v) That a fire extinguisher of a prescribed specification is always there (as per condition No. 1 of the licence) in case of transport by a tanker.

(vi) That every safety measures are there on the tankers in terms of conditions No. 4(b), 4(c) and other conditions also.

2. In May, 2000 a petty dealer was victim of serious out break of fire, as a result whereof State Government placed certain restrictions to the petty dealers. Such conditions are available in Annexure-8 to the writ petition. No such condition as regard transportation of High Speed Diesel by : the oil tanker was made. Several writ petitions were made by various writ petitioners but the purpose of making such writ petitions are not germane for due consideration. However, Government has passed an order dated 4.1.2001 restricting the petitioners and other licensee like them from utilizing services of oil tanker for transportation of High Speed Diesel Oil from retail outlet to their business premises. According to the petitioners, such restrictions are clear interference with the right of the petitioners guaranteed under Article 19(1)(g) read with Article 14 of the Constitution of India.

3. In 1981, the U. P. High Speed Diesel Oil and Light Diesel Oil (Maintenance of Supplies and Distribution) Order, 1981 came into force in exercise of the powers u/s 3 of the Essential Commodities Act, 1955 read with Governmental order dated 30th November, 1974. In the said order 1981 different meanings are given defining the meaning "d" "dealer", T "retailer" and "n" "wholesaler" "dealer" means a person engaged in the business of purchase, sale or storage for sale of High Speed Diesel Oil or Light Diesel Oil or but does not include an Oil Company; "retailer" means a dealer who is not a wholesaler; "wholesaler" means in the case of Light Diesel Oil means a dealer who deals in light diesel oil exceeding 100 litres in a single transaction and in the case of High Speed Diesel Oil a dealer who sells High Speed Diesel Oil by means of dispensing pumps. Apart from such three categories the other category is "oil company". Oil Company means the company below :

(1) Indian Oil Corporation Ltd.

(2) Hindustan Petroleum Corporation Ltd.

(3) Bharat Petroleum Corporation Ltd.

(4) The Indo-Burmah Petroleum Company Ltd.

The petitioners are High Speed Diesel Oil dealers. A person has to apply for grant of licence as petty diesel dealer under Form VI of such order, Clause 16 provides regulation of sale and supply of High Speed Diesel Oil and Light Diesel Oil. Sub-

clause (6) says that every dealer shall comply with the general or special directions not inconsistent with the order given by the State Government, the Commissioner, Food and Civil Supplies or the Collector. Any contravention of such directions shall be deemed to be a contravention of the order. Under Rule 2 Clause (xix) "petroleum in bulk" means petroleum contained in a tank irrespective of the quantity of petroleum contained therein. First schedule of the Rule and Form XI thereon says that petroleum of class "A" or petroleum of class "B" in bulk of petrol will be transported mechanically propelled vehicles. As per Rule 2 of the First Schedule the licensed, vehicle is not found confirming with the specification given in the Third Schedule or for the contravention of any of the rules and condition under which this licence is granted and holder of the licence will be punished. In the Third Schedule design and construction of Tank Vehicles for transporting petroleum in bulk is given. In U. P. High Speed Diesel Oil and Light Diesel Oil (Maintenance of Supplies and Distribution) Order, 1981 also taken care of in the Clause 2 (h) the meaning of "licensee". Licensee means a dealer holding a licence granted under the provisions of this order and includes his representative or agent; and a transporter of truck or tank, lorry owner engaged by the dealer or an Oil Company on his behalf for transporting High Speed Diesel Oil or Light Diesel Oil from storage or selling point of an Oil Company to his place of business. As per clause XVII there is a storage limited for consumers of High Speed Diesel Oil or Light Speed Diesel Oil.

4. Against this background the relevant Government orders are to be looked into. On 13.5.2000 Principal Secretary of Government of U. P. issued a circular to all the districts to ensure arrangement of retail shops of diesel for fire fighting in view of devastating fire held on 3rd May, 2000. Such circular was issued giving certain particulars to make necessary arrangement for fire prevention. On 8th September, 2000 Principal Secretary, Government of Uttar Pradesh Food and Civil Supplies, in giving answer of the representation to the writ petitioners, said that after due consideration of public interest some conditions imposed. One of such condition was in respect of making 5 km, distance from one shop to other and using/of tankers for obtaining supplies. It was decided that petty diesel dealer should obtain diesel in drums from retail outlet. From there the dispute arose as to why petty diesel dealers will not be allowed to carry petrol by tanker? How the drums can become more protective from the fire hazard in the place instead of tanker? How the element of Public interest should involve herein?

5. On 4th January, 2001, the concerned Principal Secretary of the State issued circular among the districts that the earlier circular dated 23.3.2000 stands withdrawn and old policy for grant of license has been restored. One of the condition of the circular is that no Petty Diesel Dealer shall be permitted to store at his business premises on one time not more than 4 Kilo Litres, i.e., 4000 litres of diesel oil. According to the petitioner now it is 8000 litres. In a further condition it has been specified that any petty diesel dealer should be attached to the nearest oil company retail out let and should be directed that he will take supplies only in drums and shall also store the same in the drums. All such

aforesaid referred circulating orders by the Government are impugned herein.

6. The respondents contended when licenses have been obtained on such conditions. Now the petitioners cannot turn around and challenge the validity of the conditions imposed by the authority. Secondly, can it be said that the Government order is inconsistent with the controlled order--if not, petitioners can challenge the same. Whether limited dealer cannot be covered by the controlled order.

7. In *Durga Oil Company and Another Vs. State of U.P. and Others*, , it was held that the relevant Act or the Rules do not prohibit storage of High Speed Diesel in quantity more than 1000 litres in an underground tank but what is necessary in such a case is that a licence has to be obtained in Form XII from the Chief "Controller. A licensee on Form XI granted by the District Magistrate cannot claim to be entitled to store High Speed Diesel in an underground tank and sale from the same as that would be a storage of petroleum in bulk and it would be a contravention of the terms and conditions of licence itself. Unless the licence is obtained under Form XII, one is not entitled to storage the High-Speed Diesel in an underground tank and use from the same by using of pump unit. The State Government can regulate the storage and supply of High-Speed Diesel and put restrictions and conditions as authorized under the State order. In *Chandra Gupta v. State of U. P. and Ors.* 2000 (2) EFR 92 , a Division Bench of Allahabad High Court similarly held that the dealers appointed by the District Magistrate and not by an Oil Company are not dealer within the meaning of Clause 2 (c) of the Control Order. Since they are not dealers, they cannot use an underground storage tank for selling diesel in view of Clause 3 (iv) of the Control Order. In *State of U.P. and Others Vs. Daulat Ram Gupta*, , the Supreme Court held that the conditions of grant of license and its renewal are the essential features of the Statutory Order and in guise of issuing directions, the State Government or a Licensing Authority cannot supplant the provisions of the Statutory Order, but can supplement it only with a view to give effect to the provisions of the Statutory Order.

8. In the present case, petitioners are admittedly petty diesel dealers therefore, they are neither entitled to store the diesel in an underground tank nor can be able to use dispensing pump. Therefore, if the tanker is used, the sale will be used by the dispensing pump alone. Now the question will arise, can it not be impracticable to fill up a tank by the dispensing pump from a nearby retail outlet? According to us such filling up the tank in a tanker by the dispensing pump of a retail outlet is impracticable. Therefore, the obvious alternative measure is to collect diesel into drums by the dispensing pump. If the question of fire hazard on the recent happening and safety measure of the people are considered as a Public Interest, then using drums will be much more safer than tank. Breaking of fire will be less in connection with the drums than a tank, There is no need of any explanation in respect of the fact that explosion of a tank will be used in comparison to a drum. Drums can be segregated but not the tank

in case fire occurs. Therefore, we cannot be firm on the Issue that there is no element of Public Interest involved in Issuing Government order or Orders. In other words the Government order or Orders is/are supplement but not the supplant of the Statutory Order. The further practical aspect is that the petty diesel dealers cannot be treated at par with the retail outlet whose licence has been granted by the Oil Company. If the same is allowed then there would be two sets of licence by the two authorities being similar in category. It is to be remembered that making of an underground statutory tank had been prohibited by the Supreme Court as well as the Allahabad High Court. In such case if the using of the tank by the petty diesel dealers is taken then the next question will arise where such tank will be unloaded? It cannot be expected that such tank will be unloaded in different drums and if one does so fire will not break. Therefore, fire hazard neither will be stopped nor will be minimized by using oil tanker. If the prayer is allowed in such circumstances the same will be dehors the principles laid down by the Supreme Court in the referred case. It will be a back door entry on the part of the petty dealers to become competitors, of licensee of the retail outlet under the Oil Company. Neither the Act, nor the Rules/Orders say that the same is the sincere desire of the statute. Hence any executive order to control the prevailing situation cannot be said to be contrary to the statute but in consonance with the statute.

9. Therefore, we do not find any reason whatsoever to interfere with impugned order or orders imposed by the authority concerned. It is unfair to say that such action on the part of the State is violative of Article 14 and Article 19(1)(g) of the Constitution of India.

10. Hence, in totality, the writ petition cannot succeed, therefore, the writ petition stands dismissed. Interim order if any stands vacated. No order is passed as to costs.