

(2010) 09 MP CK 0083

In the Madhya Pradesh High Court

Case No : Writ Petition No. 6846 of 2010

Yogesh Kumar Gulati

APPELLANT

Vs

Satya Prakash Dhingra and Another

RESPONDENT

Date of Decision : 09-09-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Petroleum Rules, 2002 — Rule 144, 149, 150, 154, 154(2)

Citation : (2010) ILR (MP) 2324 : (2011) 3 MPHT 465

Hon'ble Judges : Ajit Singh, J

Bench : Single Bench

Advocate : Sanjay Agrawal, for the Appellant; Rajesh Maindiretta and A.K. Soni for Respondent No. 1 and S.M. Lal, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Ajit Singh, J.—By this petition, filed under Article 226 of the Constitution, the Petitioner has prayed for quashing of order dated 10.5.2010, Annexure P12, passed by the Commissioner, Jabalpur Division (Respondent No. 2) on the ground that appeal is not maintainable under Rule 154(2) of the Petroleum Rules, 2002 (in short, "the Rules").

2. The Petitioner is a proprietorship firm having a petrol and diesel retail outlet of Hindustan Petroleum Corporation Limited at village Raipura, District Jabalpur. The retail outlet has been established on the land bearing Khasra No. 167/2, area 22,400 sq.ft., of which Respondent No. 1 is the owner. By a lease deed, Annexure P4, the land had been given on lease by Respondent No. to the Petitioner for 15 years commencing from 1.10.1993 to 30.9.2008 for setting up and running the petrol/diesel retail outlet. Condition No. 5 of the lease deed provides that the Petitioner shall have option to renew the lease for a further period of six years on the same terms and conditions after the expiry of the term of lease. The petrol and diesel pump was set up by the Petitioner after obtaining no-objection certificate dated 29.10.1993, Annexure P2, under the Rules from

the District Magistrate, Jabalpur. On completion of the term of lease, the Petitioner opted for its renewal for a further period of six years and sent a communication to Respondent No. 1 in this regard. But Respondent No. 1 declined to extend the term of lease. The Petitioner has, therefore, filed a Civil Suit No. 13-A/2009 (new) in the Civil Court, Jabalpur, for execution of lease deed. Respondent No. 1 in retaliation made a complaint, Annexure P6, to the District Magistrate, Jabalpur, for cancelling the no-objection certificate dated 29.10.1993 granted to Petitioner inter-alia on the ground that it has ceased to have any right to use the land after the expiry of lease period. The District Magistrate, after hearing Respondent No. 1 and the Petitioner by order dated 7.12.2009, Annexure P10, dismissed the complaint by holding that there was no good ground for cancelling the no-objection certificate. Aggrieved, Respondent No. 1 has filed an appeal under Rule 154(2) of the Rules before the Commissioner (Respondent No. 2). The Petitioner raised a preliminary objection against the maintainability of appeal which the Commissioner has dismissed by the impugned order dated 10.5.2010, Annexure P12. It is in this background the Petitioner has filed the present petition.

3. The learned Counsel for Petitioner has argued that Rule 154(2) of the Rules does not provide for any appeal against an order dismissing the complaint for cancellation of no-objection certificate. The learned Counsel for Respondent No. 1, in reply, argued that the appeal is maintainable.

4. Under Chapter VII of the Rules licence is granted to a person by the Licensing Authority on his obtaining no-objection certificate under Rule 144 from the District Authority for the site proposed. The District Authority may, under Rule 149 by a reasoned order, refuse to grant no-objection certificate and likewise it may, under Rule 150, cancel the no-objection certificate granted on being satisfied that the licensee has ceased to have any right to use the site for storing petroleum. Rule 154 provides for appeal against the order of the District Authority to the next superior authority. It reads as under:

154. Appeals.- (1) An appeal shall lie against any order refusing to grant, amend or renew a licence cancelling or suspending a licence to.

(i) the Central Government, where the order is passed by the Chief Controller;

(ii) the Chief Controller, where the order is passed by a Controller;

(iii) the immediate official superior to the District Authority, where the order is passed by the District Authority;

(iv) the immediate official superior to officer appointed under Rule 33 in the case of vessels licensed for the carriage of petroleum in bulk.

(2) An appeal against any order of the District Authority refusing to grant or cancelling a no-objection certificate shall lie to the authority which is immediately superior to the said District Authority.

(3) Every appeal shall be in writing and shall be accompanied by a copy of the order appealed against and shall be presented within sixty days of the order passed.

5. Sub-rule (2) of Rule 154 quoted above permits an appeal against any order of the District Authority "refusing to grant or cancelling a no-objection certificate". The sub-rule does not provide for an appeal when the District Authority refuses to cancel a no-objection certificate. The words "refusing to grant or cancelling" cannot be read, as argued by the learned Counsel for Respondent No. 1, as "refusing to grant or refusing to cancel". The language used in the sub-rule does not permit such a construction and it plainly means that appeal is permissible only when the District Authority (i) refuses to grant a no-objection certificate, and (ii) when District Authority cancels a no-objection certificate. As already stated, the sub-rule does not provide for an appeal when the District Authority refuses to cancel the no-objection certificate. If the construction, as advanced by the learned Counsel for Respondent No. 1, is accepted there would be no appeal against an order cancelling a no-objection certificate which is clearly not the intention of the Rule Making Authority.

6. For these reasons, I have no hesitation in holding that appeal of Respondent No. 1 before the Commissioner is not maintainable and the order dated 10.5.2010, Annexure P12, is accordingly quashed.

7. The petition succeeds and is allowed but without any order as to costs.