

Arvind Kumar Vs. State of Bihar and ors.

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Court : Patna

Decided On : Feb-12-1996

Judge : D.P. Wadhwa, C.J. and S.K. Chattopadhyay, J.

Appeal No. : L.P.A. No. 6 of 1996 (R)

Appellant : Arvind Kumar

Respondent : State of Bihar and ors.

Disposition : Appeal Dismissed

Prior history : D.P. Wadhwa, C.J. 1. Impugning the order dated 22.12.1995 passed in CWJC No. 3341/95 (R), the petitioner/appellant has preferred this LPA. 2. In the writ application the orders dated 14.11.1995 and 15.1.1995 passed by the respondent Nos. 2 and 3 respectively were impugned, by reason of which the office and godown of the petitioner for storing liquified petroleum Gas (LPG) were sealed and closed. A prayer was also made for quashing the report dated 14.11.1995 (Annexure-4). 3. The petitioner was

Judgement :

D.P. Wadhwa, C.J.

1. Impugning the order dated 22.12.1995 passed in CWJC No. 3341/95 (R), the petitioner/appellant has preferred this LPA.

2. In the writ application the orders dated 14.11.1995 and 15.1.1995 passed by the respondent Nos. 2 and 3 respectively were impugned, by reason of which the office and godown of the petitioner for storing liquified petroleum Gas (LPG) were sealed and closed. A prayer was also made for quashing the report dated 14.11.1995 (Annexure-4).

3. The petitioner was granted a licence for distributing LPG to the consumers by the Indian Oil Corporation for the Municipality of Garhwa town. The deputy Collector of Garhwa was deputed by the Deputy Commissioner to supervise the distribution work of the petitioner. One Nathun Prasad Keshari lodged a complaint against the petitioner for doing black marketing in LPG arid on the basis of the said complaint; the respondent No. 2 directed the Block Supply Officer and Supply Inspector to inspect all the documents and registers maintained in the office and godown of the petitioner. It is stated that though the office hour was 10 AM to 5 PM but with some mala fide intention the respondent No. 3 visited the premises of the petitioner at 6.30 PM on 14.11.1995 and sealed the office and a copy of same was communicated to the Manager of the godown on 15.11.1995. On 15.11.1995 the out-side gate of the godown of the petitioner was also sealed and a lock was put on the same. The order dated 14.11.1995 was challenged on the ground that the Deputy Commissioner being the licensing authority, the respondent No. 2 the Sub-divisional Officer had no jurisdiction to make an enquiry into the same. On these grounds, prayer was made to quash those orders and to remove the seal, of the godown as well as the shop premises of the petitioner.

4. A counter affidavit was filed on behalf the respondent Nos. 1 and 5 in which specified stand was taken that on receiving several complaints against the petitioner, the Deputy Commissioner deputed respondent No. 4 to supervise and regulated supply of LPG to the bond fide consumers. The petitioner refused to act in accordance with the provisions of supply of LPG and as such, further grievance was made by the public. Some of the complaint petitions have been annexed to the counter affidavit. The enquiry officer, after sealing the office of the petitioner on 14.11.1995 pasted a note in-the gate of-Garhwa Gas Agency office informing the proprietor of the agency to turn up on 15.11.1995 at 10.30 AM so that the seal may be removed in his presence and the papers available in the office may be

examined and godown maybe inspected. On 15.11.1995 AM, other request was made to the Manager of the firm to open the godown for verification but the Manager showed his inability and as such, the enquiry officer had no option but to lock the gate of the godown in presence of the Manager. The petitioner never met respondent Nos. 1 and 2 and intentionally neglected the order of the enquiry officer knowing fully well that sealing of the office and godown premises was necessitate by his absence at the time of the visit of the enquiry officer and his appearance would automatically result in unsealing of the premises and inspection and verification of the papers in the office and godown. In paragraph 32 of the counter affidavit the respondents prayed before this Court for directing the petitioner to appear before the respondent Nos. 2 and 3 and to get the seal opened so that complaints against him regarding irregular and irratic supply at LPG may be enquired into and further steps may be taken in accordance with law. The learned Single Judge, on being satisfied with the stand taken by the respondents in the counter affidavit, dismissed the writ application.

5. Mr. Gadodia, the learned Counsel appearing on behalf of the appellant, has contended that as no fee has been prescribed for obtaining by the LPG dealer the petitioner/appellant cannot be held to be a licensee under the Bihar Trade Articles (Licences Unification) Order, 1984 (in short Unification Order). Secondly, it is contended mat power of search and seizure has been prescribed under Clause 7 of the Unification Order and names of Officers have been mentioned in Notification dated 21.11.1989 and as such, neither Supply Inspector nor the Supply Officer has any Jurisdiction/Seizure/search of tine business premises of the petitioner. In support of his contention, Mr. Gadodia has replied oil an Order of a learned Single Judge dated 5.10.1994 passed in Cr. Misc. No. 14080/94.

6. Mr. Agrawal, on the contrary, has submitted that the petitioner, being a licensee under the Unification Order, cannot be allowed to rum back arid to challenge the terms of said licence Referring to Sub-clauses (y) and (y)(c) of Clause 2 of Unification Order, it is submitted that the same clauses have been inserted on 17.10.1985 and licence fee has been prescribed m respect of LPG arid as such, the appellant cannot be allowed to contend that he is not covered by the conditions of licence.

7. The argument of Mr. Gadodia that in view of the decision rendered in the case of Satyanarain Prasad v. State of Bihar 1988 PLJR 502, the petitioner/appellant cannot be held to be a licensee under the Unification Order, in our view, is devoid of merit and must be rejected. In the case of Satyanarain Prasad, this Court found a lacuna in Schedule IV of the Unification Order and held that when no licence fee is prescribed for licences for dealing in pulses, confiscation and prosecution for want of licence in such a situation is invalid. On the other hand, licence fee in respect of LFG has been mentioned in Schedule IV of Part II of the Unification Order, which is Rs. 500/- annually. Not only annual renewal fee but secondary fee and terminal fee have also been prescribed in Schedule IV.

8. The next contention of Mr. Gadodia that in the case of Ranchi Thok Khadya Vyapari Sangh v. State of Bihar 1987 PLJR 46, this Court having struck down the provision of licence fee prescribed in 1985, the petitioner/appellant cannot be said to be a licensee, in our opinion, is misconceived. The licence fees given in Schedule IV, which was originally issued, were enhanced by GSR 17 dated 10.7.1995 which substituted the original Schedule IV. This Court in the aforesaid decision struck down the enhancement of licence fee on the ground of lack of quid pro quo. In such circumstances, at present the old rate prevails which has been mentioned in Schedule IV. This aspect of the matter was considered by a Division Bench in the case of Naresh Prasad v. State of Bihar 1995 (1) East. Cr. C. 118.

9. The last submission of Mr. Gadodia that respondent Nos. 2 and 3 had no jurisdiction to search and seizure under the Unification Order and as such sealing of business premises of the petitioner is illegal, is also not sustainable inasmuch as under Clause 30 of the Unification Order the Block Supply Officer or any other person empowered by the Government has been authorised to search and make seizure.

10. Another revealing factor is that the petitioner in his writ application did not specifically raise all the aforesaid grounds which are sought to be raised by Mr. Gadodia in this appeal, from the impugned order of the learned Single Judge, it does not appear that any of those points were ever raised. Moreover, when the definite stand of the respondents is that as soon as the petitioner appears before

the respondent Nos. 2 and 3, the premises will be unlocked, in our view, the learned Singly Judge was justified in refusing to grant any relief to the petitioner. In this connection, Clause 24 of the Unification Order may be looked into, which, inter alia, contemplates that every dealers shall, when so refused by general or special direction of Licensing Authority, furnish truthfully and to the best of his knowledge such particulars or information relating to any trade article, as may be required. Thus, it cannot be disputed that the concerned officers were well within their jurisdiction to ask for the documents from the petitioner.

11. Considering all these aspect of the matter, we are of the view that no case has been made out for interfering with the impugned order dated 22.12.1995 and as such, this appeal is dismissed.

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