

(2012) 09 AP CK 0024

Andhra Pradesh High Court

Case No: Writ Appeal No. 1112 of 2012

D.V.S. Jaganmohan Rao

APPELLANT

Vs

Indian Oil Corporation Limited
and Others

RESPONDENT

Date of Decision: Sept. 28, 2012

Citation: (2013) 4 ALD 15 : (2013) 3 ALT 2

Hon'ble Judges: Pinaki Chandra Ghose, Acting C.J.; Vilas V. Afzulpurkar, J

Bench: Division Bench

Advocate: M.R.K. Choudary, for Mr. P.V. Mahesh, for the Appellant; Deepak Bhattacharjee, SC for IOCL for Respondent Nos. 1 and 2, G.P. for Civil Supplies for Respondent Nos. 3 and 4 and Mr. P. Venugopal, Counsel, for the Respondent

Final Decision: Dismissed

Judgement

Pinaki Chandra Ghose, A.C.J.

1. This writ appeal is directed against the order dt. 7.8.2012 passed by the Hon"ble Single Judge, in W.P. No. 2401 of 2012. Respondent No. 5 - writ petitioner filed the writ petition for a writ of certiorari to quash the proceedings of respondent No. 4 - Joint Collector, dt. 23.1.2012, whereby he rejected the writ petitioner's application for renewal of its Form-B licence to run the petroleum retail outlet.

2. The Hon"ble Single Judge on consideration of the matter by the impugned order, set aside the proceedings of respondent No. 4 dt. 23.1.2012 and directed respondent No. 1 - Indian Oil Corporation (IOC) to reconsider the writ petitioner's application for renewal without insisting on production of the lease deed. It was also directed that the writ petitioner shall be permitted to run the retail outlet till disposal of its renewal application. Accordingly, the writ petition was allowed.

3. Being aggrieved and dissatisfied with the said order dt. 7.8.2012 passed by the Hon"ble Single Judge, this appeal is filed by respondent No. 5 in the writ petition.

4. There is no dispute insofar as the facts which were presented before us as well as before the Hon"ble Single Judge, that respondent No. 5 - writ petitioner is a partnership firm. The brother of the appellant herein, namely, Dannapaneni Venu Gopala Murahari Rao, is one of the partners of the said firm. The father of the said Venu Gopala Murahari Rao and respondent No. 5, during his life time, executed a lease deed in favour of the writ petitioner - firm, for a period of fifteen years. Later, the lessor (father) died leaving behind the said Venu Gopala Murahari Rao, appellant herein and four others as legal heirs. Subsequently, it appears that disputes arose between the legal heirs of the original lessor. By the impugned proceedings in the writ petition, the Joint Collector rejected the renewal of licence to writ petitioner, and the said order of rejection was set aside by the Hon"ble Single Judge with the directions as aforesaid.

5. Heard the learned counsel for the parties and perused the material available on record.

6. It appears that after death of original lessor, who is father of the appellant, certain disputes arose between his legal heirs. The appellant wanted to take advantage of the matter and according to him lease is not subsisting at that stage and therefore the licence, which was granted under the Andhra Pradesh Petroleum Products (Licensing and Regulation of Supplies) Order, 1980 (for short, "the Control Order"), cannot be renewed in favour of the writ petitioner.

7. Clause 7 of the Order deals with powers to refuse licence and the same reads as under:

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

8. It appears from the said Control Order that nowhere it has been stated that the licence cannot be renewed in favour of a firm. On the contrary, it appears from the Definitions Clause in 2(g) of the Control Order, that "dealer" means a person engaged in the business of purchase, sale or storage, for sale of the petroleum products and includes his representative, agent and servants or any other person acting on his behalf and also a hawker but does not include an Oil Company. From the said definition in the Control Order, it appears to us that the "dealer" includes even the representative of a person, who is running the business, or his agent and servant or any other person acting on his behalf. In the facts and circumstances of the case, there is no impediment in the Control Order to pass an order by the Joint Collector to grant renewal in favour of the firm to continue with the licence.

9. Sri M.R.K. Choudary, learned Senior Counsel appearing in support of this appeal tried to impress upon us by making submissions relating to lawful possession of the property in question, and he relied upon the decisions in [M.C. Chockalingam and Others Vs. V. Manickavasagam and Others](#), [Smt. Y. Anasuya Vs. Government of](#)

[Andhra Pradesh and Others, M. Pratap Reddy and Sons Vs. The Director of Civil Supplies and Others, C. Albert Morris Vs. K. Chandrasekaran and Others, , Mandakini Restaurant and Bar Vs. Deputy Commissioner of Prohibition and Excise and Others,](#) and an unreported decision in M/s. Sri Vijaya Filling Station v. Collector (CS) Khammam (W.P. No. 20523 of 2008, dt. 1.2.2011).

10. It appears to us that it is not in dispute, even by the respondents, that the writ petitioner is carrying on its business in the name and style of the partnership firm and further it would be evident from the material placed before us that the said partnership deed was entered into between two partners and the dealership agreement was also forwarded to IOC and there is no iota of evidence before us which can read that the IOC denied the dealership agreement to the writ petitioner. Hence, in our view the dealership agreement has already been accepted by the IOC since the said agreement was continued on and from 30.7.1990 for a considerable period, which is more than fifteen years, and furthermore, no steps have been taken by the IOC against the said firm or partners that they were running the said business in question in contravention to the terms and conditions which were agreed upon between the IOC and the writ petitioner.

11. Further, from the facts aforesaid, inference can be drawn that the dealership was granted in favour of the partnership firm and the partnership was continuing with the said business. It further appears, after taking into consideration all the material placed before us, that the said partnership firm was duly carrying on their business after obtaining licence from the control authority under the Petroleum Control Order. It also cannot be brushed aside from the fact that for the last fifteen years when the said dealership business was running no objection was ever raised by the appellant - respondent at any point of time. It was only after the demise of father of the appellant, such disputes sought to be raised by the appellant in the guise of the violation of the Control Order so that the rights which cannot be enjoyed by him directly, tried to get such rights throwing a spanner in the wheels of the partners to stop the business in the name of the firm.

12. We have minutely gone through the decisions relied upon by the learned Senior Counsel appearing for the appellant. After scrutinizing the decisions cited, in our considered opinion, the decisions relied upon by the learned Senior Counsel cannot be of any help to the appellant, in the facts and circumstances of the case. The decisions cited relate to different rules under different Acts, where lawful occupation of premises by licensee is required to be established for seeking renewal. In the case on hand, it appears to us that even after expiry of the lease, no determination has been made with regard to the lease and firm is lessee, holding over. Further more it is also to be noted that one of the partners of the said firm is nonetheless a co-sharer of the property in question along with the appellant and therefore, it cannot be said that after expiry of the lease in question the said firm can be treated as in unlawful occupation.

13. We further find that the State Government has not taken steps to grant licence in accordance with the Control Order. Learned Government Pleader appearing for respondent No. 4 - Joint Collector submitted that they do not have any objection even to renew the licence. Further, in paragraph 7 of the counter affidavit filed in the writ petition, by the Joint Collector, it was specifically stated that Clause 7 of the Control Order empowers the licensing authority to refuse renewal of licence after giving an opportunity to the dealer and further admitted that the Control Order does not stipulate that a lease deed is compulsory. Hence, learned Government Pleader has specifically stated before us that respondent No. 4 has no objection even to issue licence since in his opinion also there is no impediment to grant such licence in favour of the writ petitioner.

14. Such being the matrix of the facts of this case, it appears to us that the order so passed by the Hon"ble Single Judge does not suffer from any illegality or irregularity. In our opinion, His Lordship rightly set aside the proceedings of respondent No. 4 dt. 23.1.2012. Hence, we do not intend to pass any further order except directing respondent authorities to take steps in the matter as far as practicable, in accordance with the provisions of law, within a period of three weeks from date. There is no merit in this appeal and the same is accordingly dismissed. No costs.