

17th March,
2020
(AK)
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W.P. 5097(W) of 2020

Sri Rakesh Kumar Srivastava
Vs.
The Union of India & Ors.

Mr. Rakesh Kumar Srivastava
...For the Petitioner (in person)

Mr. S. K. Mal
Mr. Bimalendu Das
...For the respondent nos. 2 to 7

The matter is taken up for hearing on the ground of urgency on the mentioning of the petitioner. The petitioner has obtained a No Objection Certificate from his advocate and has filed the same in the concerned section today, having entry no. A 5092.

Learned counsel appearing for the respondent nos.2 to 7 is graceful enough to appear despite leave given to advocates not to appear due to the apprehension of the Corona virus by a notification of this court, considering the urgency of the matter.

The writ petitioner has come up with the grievance that, despite the pendency of an appeal filed by the petitioner, against the cancellation of the petitioner's permission to carry on business of dispensation of petroleum products under the name and style of Matigara Service Station, since as long back as on January 27, 2017.

It is submitted by the petitioner that, despite the pendency of the appeal and there being no fault on the part of the petitioner for such pendency, the petitioner has been ousted forcibly, along with his belongings and assets, from the suit premises in the meantime and the respondent no. 2 is trying to grant a fresh permission in favour of third parties.

Learned counsel appearing for the respondent nos.2 to 7 submits that, subsequent to the termination of the petitioner's licence, an ad hoc licence was granted to a third party, namely Sagar Service Station, on January 18, 2017 itself, and subsequently a permanent licence was given on April 23, 2019 in favour of another entity, namely, Aradhya Service Station.

It is further submitted that in view of there being no interim order in the appeal, there was no bar for the respondent no.2 to grant fresh licence in the meantime, despite the pendency of the petitioner's appeal.

It is seen from the materials annexed to the writ petition that the writ petitioner was informed by the respondent no.2, by a communication dated January 27, 2017, annexed at Page-48 of the writ petition, that the Ministry of Petroleum and Natural Gas was reviewing the appellate process itself, pending finalization of which all appeals were kept on hold.

Thereafter, it is submitted by the petitioner, the petitioner moved a writ petition before a co-ordinate Bench of this court inter-alia seeking a direction of early hearing of the appeal.

Upon such writ petition being dismissed, the petitioner moved a Division Bench of this court in appeal, which initially directed the Appellate Authority to dispose of the appeal within two months.

However, subsequently the said order was modified/clarified on July 16, 2019 by the same Division Bench by observing that since the Appellate Authority had been changed by an amendment in the meantime by issuance of amended guidelines by the aforesaid Ministry, the direction given by the Division Bench previously, to consider the appeal within two months, obviously meant consideration of the appeal in accordance with law, following due procedure and norms which are fixed for consideration of appeals.

It was further observed in such order dated July 16, 2019 that it appeared from the submissions of both the sides that the parties might have certain disputes as to whether certain Rules having to be complied with regarding such registration of appeal relating to payment of fee, consideration of appeal etc.

It is submitted by the petitioner that the amended Rules, whereby the Appellate Authority was created and the provision, of the deposit of Rs. 5 lakh as a pre-requisite of consideration of the appeal, were introduced by an amendment to the guidelines only on August 3, 2018.

Since the appeal of the petitioner was pending from much prior to that, such amendment ought not to be applicable to the petitioner.

Even the order the Division Bench records that there was a dispute as to some Rules regarding the procedure.

However, since the Division Bench categorically directed the newly-formed Appellate Forum to take up the appeal for hearing and disposing it of within two months, subsequently extended by six weeks, *“in accordance with law following due procedure and norms which are fixed for consideration of appeals”*.

As such this court, sitting singly, cannot sit in modification over the said order of the Division Bench, which the petitioner to comply with the statutory provisions regarding the deposit of fees for registration of the appeal and otherwise, despite having recorded that the petitioner has a grievance regarding the procedure.

In such view of the matter, although this court cannot grant the relief sought in the present writ petition, allowing which would virtually have the effect of modifying the order dated July 16, 2019 passed by the Division Bench, as rightly submitted by learned counsel for the respondent nos.2 to 7, it ought to be left open to the petitioner to approach the appropriate forum for the remedy sought herein.

That apart, the petitioner also prays for an interim order of police protection so that the petitioner may run the said petroleum business.

However, in view of the respondent nos.2 to 7 having already granted licence in respect of third parties in the meantime as per their own submission, it would not be proper for this court to pass any direction on the police for aiding the petitioner in resuming his business from the premises in question, thereby taking away the valuable rights created in favour of third parties.

Accordingly, W.P. 5097(W) of 2020 is disposed of by granting the petitioner liberty to approach the Division Bench which passed the order dated July 16, 2019 in MAT 430 of 2017 with CAN 5260 of 2019 with MAT 113 of 2017, with an appropriate application for modification of such order in the tune of the reliefs sought in this writ petition.

It is made clear that the disposal of the present writ petition shall not prevent the writ petitioner from raising all the grievances, which have been raised in the present writ petition, in such application for modification.

If such an application is made, the same may be listed on an urgent basis subject to leave of the Division Bench.

Meanwhile, the local police is directed to undertake appropriate investigation on the First Information Report, registered on the complaint of the petitioner, if any, in accordance with law.

The Supplementary Affidavit and Affidavit of service filed by the petitioner in court today be kept on record.

It is further recorded that a copy of the Supplementary Affidavit is handed over to learned counsel for the respondent nos.2 to 7 by the petitioner in court after the hearing is over.

(Sabyasachi Bhattacharyya, J.)