A STATE OF U.P. AND ORS.

v.

DAULAT RAM GUPTA

MARCH 22, 2002

B [V.N. KHARE AND ASHOK BHAN, JJ.]

U.P. High Speed Diesel Oil and Light Diesel Oil (Maintenance of Supply and Distribution) Order, 1981—Clauses 16(6) and 4 with Form 'B' and 'C'—Sale of High Speed Diesel Oil and Light Diesel Oil in rural areas—Issuance
C *of direction by State Government of licensing Authority—With regard to refusal to renew licences granted to petty dealers under the order if their places of business are within a radius of 5 Kms, of retail outlet run by the Government Oil Company—Correctness of—Held, such direction not correct since it is inconsistent with the provisions of the statutory Order and is not for purpose*
D *of giving effect to the statutory order.*

The question which arose for consideration is whether the State government or the licensing authority can issue direction for refusal of renewal of licences granted to petty dealers under sub-clause (6) of clause 16 of the U.P. High Speed Diesel Oil and Light Diesel Oil (Maintenance of Supplies
E **and Distribution) Order, 1981 if their places of business are within a radius of five Kilometers of retail outlet run by a Government oil company.**

Dismissing the appeal, the Court

HELD: 1. The provisions of the U.P. High Court Speed Diesel Oil and
F **Light Diesel Oil (Maintenance of Supplies and Distribution) Order, 1981 do not provide for refusal to renew a licence granted under the statutory order, if the place of business of a licensee falls within a radius of 5 kms, of a government run retail outlet. Further, the statutory order neither expressly nor by necessary implications prohibit the grant of licence to person or refusal to renew such a licence if the place of business of such licensee falls within**
G **the radius of 5 Kms. of a government run retail outlet. [846-D-E]**

2.1. statutory order clause 16 sub-clause (6) enables the making of an order of issuing of direction by the executive. There are two restrictions on the power of the State Government or a licensing authority while issuing a
H **general or special direction-firstly, such a direction should not be inconsistent**

with the statutory Order and secondly, such direction can be issued only for purposes of giving effect to the provisions of the statutory order. A

[844-G-H; 845-A]

2.2. The direction so issued by the State government or licensing Authority must be compatible with the provisions of the statutory order. The State Government or the licensing authority in exercise of delegated powers to issue direction cannot make provisions which are inconsistent with the statutory order. Any direction issued if found not in conformity with the provisions of the statutory order, the same must be held to be beyond the enabling provisions of the statutory order. The power to issue directions is derived from sub-clause (6) of Clause 16 of the statutory order and a delegatee on whom such a power is conferred is required to act within the framework of the authority conferred by the statutory order. In the instant case the direction issued by the licensing authority that the licence of the respondent shall not be renewed on the premise that his place of business falls within a radius of 5 kms, of retail outlet of a Government run oil company being not in conformity with the provisions of the statutory order, it must be held to be inconsistent to the provisions of the statutory order. B C D

[845-C-D-E-F]

2.3. The power of the State Government or the specified authorities, the provisions empowering them to issue directions to dealers could be exercised only to give effect to the provisions of the statutory order and further to effectuate the object behind the statutory order if the object is discernible in the statutory order. The nature of directions which could be issued under the enabling provisions contained in sub-clause (6) of Clause 16 of the statutory order, is only for purpose of giving effect to the statutory order and not otherwise. The conditions of grant of licence 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. The State Government or the licensing authority while giving effect to the provisions of the statutory order is not authorised to amend the statutory order by issuing directions. Once the enabling provisions restrict the power of issuing direction only for giving effect to the provisions of the statutory order, the nature and extent of direction which the State Government or any authority specified therein are empowered to issue is confined to the area which is marked out by the statutory order. In the instant case the licensing authority while issuing the direction that the E F G H

respondent's licence shall not be renewed on the premise that his place of business falls within a radius of 5 kms, of a retail outlet of government run oil company has, in fact, purported to amend the conditions of renewal of Licence granted under the statutory order which was not permissible under sub-clause (6) of Clause 16 of the statutory order inasmuch as the same was not for purpose of giving effect to the statutory order. [845-F-G-H; 846-A-C]

Daulat Ram Gupta, **v.** *State of U.P. and Ors.,* **(1996) ALJ, 212 referred to.**

CIVIL APPEAL JURISDICTION : Civil Appeal No., 2339 of 2002.

From the Judgment and Order Dated 28.3.2001 of the Allahabad High Court in C.M.W.P. No. 11399 of 2001.

WITH

C.A.Nos. 2340, 2341, 2342 of 2002 and S.L.P. (C) Nos. 5082, 5085, 5087, 5089, 5091, 5092 5094 and 5095 of 2002.

A.B. Rohtagi, S. Markandaya, Ashok K. Srivastava, Ms. C. Markandaya, Kamlendra Misra and, Ms. Feroze Bano for the appearing parties.

The Judgment of the Court was delivered by :

V.N. KHARE, J. Leave granted in S.L.P.(Civil) Nos. 472/2002, 473/2002, 13106/2001 and 2908/2002.

The short question which falls for our consideration in this group of appeals is whether the State government or the licensing authority can issue direction for refusal of renewal of licences granted to petty dealers under the U.P. High Speed Diesel Oil and Light Diesel Oil (Maintenance of Supplies and Distribution) Order, 1981 (hereinafter referred to as the ('statutory order') if their places of business are within a radius of five kilometers of retail outlet run by a government oil company.

Since common question of fact and law is involved in this group of appeals, learned counsel for the parties have advanced arguments in Special Leave Petition (Civil) No. 472/2002. Therefore, we propose to notice the facts which have given rise to Civil Appeal No. 2339/2002 (arising out of S.L.P (Civil) No. 472/2002.

Earlier, the sale of Light Diesel Oil and High Speed Diesel Oil in the State of U.P. was governed by an Act known as 'U.P. Motor Spirit, Diesel Oil and Alcohol (Imposition of Tax) Act, 1939 enacted by provincial legislature of the then united provinces. Subsequently, the Parliament enacted the Essential Commodities Act, 1955 (hereinafter referred to as 'the Act') with a view to provide, in the interest of general public, for the control of the production, supply and distribution of, and trade and commerce, in certain commodities. It is not disputed that the sale of High Speed Diesel Oil and Light Diesel Oil is one of the essential commodities which is governed by the Act. Section 3 of the Act provides that if the Central Government is of the opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein. Sub-section (2) thereof provides that without prejudice to the generality of the powers conferred by sub-section (1), an order amongst other things, may provide for regulating by licences, permits or otherwise the storage, transport, distribution, disposal or consumption of any essential commodity. Section 5 of the Act provides that the Central government may, by notified order, direct that the power to make orders or issue notifications under Section 3 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable by a State government or any officer or such authorities subordinate to the State government, as may be specified in the direction.

After passing of the Act, the government of U.P. felt that in the absence of retail outlets for sale of Diesel Oil in rural areas, the consumers, specially the farmers have to face considerable hardship in carrying out their agricultural operations and, therefore, it took decision to grant licences to petty dealers in rural areas to sell Diesel Oil. It is in the aforesaid background, the State government of U.P. framed the statutory order, in exercise of power delegated to it under the Act.

The respondent herein was granted a licence for sale of Diesel Oil under the statutory order. The said licence was being renewed from time to time. On 25.11.1981, the government of U.P. by an executive order directed that no license for retail sale of Diesel Oil granted under the statutory order shall be renewed if the place of business of such licensee falls within a radius of 5 kms. of the government run retail outlets. The said executive order dated 25.11.1981 was challenged by means of writ petitions before the High Court

A of Judicature at Allahabad. It is alleged that by a judgment and order dated 14.5.1989, the High Court allowed the writ petition, *inter alia*, holding that the impugned executive order dated 25.11.1981 placed an unreasonable restriction on the fundamental right of the petty dealers and that the said executive order could not be passed without hearing the licensee affected thereby.

B

Aggrieved, the State of U.P. challenged the aforesaid judgment by means of special leave petitions in this Court. However, on 16.9.1987, the Government of U.P. issued another identical executive order imposing similar restrictions during pendency of the special leave petitions before this Court. C This Court disposed of special leave petition No. 8742/1981 and the connected special leave petitions in view of the fact that the impugned executive order was superseded by a fresh executive order dated 16.9.1987, without expressing any opinion on merits, leaving all the contentions open to any fresh writ petition that may be filed by an aggrieved licensee before the High Court.

D In the year 1988, the petty dealers who had licences under the statutory order and which were not being renewed in view of the executive order dated 16.9.1987, filed another fresh set of writ petitions challenging the executive order dated 16.9.1987. On 7.3.1995, a Division Bench of Allahabad High Court in the case of Daulat Ram *Gupta* v. *State of U.P. and Ors.*, (1996) ALJ, 212 allowed the writ petitions and quashed the executive order dated 16.9.1987. E Despite the said decision, the government issued another executive order in 1997 on the same pattern and lines which was earlier set aside by the High Court. The said executive order of 1997 came to be superseded by another order dated 4.1.2001. Paras 1 and 2 of the order runs as under:

F "1. The object and aim of the government is that arrangement be made with respect to those places, which are far away from regular diesel retail outlet of oil companies, that their demands be met conveniently from the adjoining places and for the sake of it the petty dealers of high speed diesel be appointed in the districts under the provisions of Uttar Pradesh High Speed Diesel Oil (Maintenance of G Supply and Distribution) Order, 1981.

2. Regular diesel retail outlet fully fulfils the need of the consumers in all the directions and even it remains financially autonomous too. Therefore, petty diesel dealers be appointed at the place more than the distance of 5 k.m. through road from the regular diesel retail H outlet (away from national highway and national road).

Although the said executive order did not provide for refusal to renew licence granted under the statutory order, yet curiously enough, the District Supply Officer, Bareilly, by letter dated 1.3.2001 informed the respondent herein that since his retail outlet of Diesel Oil falls within a radius of 5 kms. of a retail outlet run by the government oil company, therefore his licence for retail vend of Diesel Oil shall not be renewed. It is against the said order, the respondent herein filed a petition under Article 226 of the Constitution before the High Court. The High Court relying upon the decisions in *Daulat Ram Gupta* v. *State of U.P. and Ors.*, (supra) and in Writ Petition No. 10574/2001 decided on 22.3.2001 set aside the order refusing to renew the licence and directed the appellants herein to entertain and consider the respondent's application for renewal of licence, irrespective of the alleged aforesaid restrictions contained in the government order dated 4.1.2001. Consequently, the Writ Petition was allowed, and it is against the said judgment and order of the High Court, the State of U.P. has preferred these appeals and special leave petitions.

Learned counsel appearing for the appellant assailed the impugned judgment, inter alia, on the ground that under sub-clause (6) of Clause 16 of the statutory order, it is permissible for the State government to issue an executive order or direction for non-renewal of licence of any petty dealer if his place of business falls within a radius of 5 kms. of a retail outlet of a government run oil company. Learned counsel appearing for the respondent supported the judgment of the High Court.

On the argument of learned counsel for the parties, the question that arises for consideration is whether the District Supply Officer could refuse to renew the licence granted under the statutory order, if the licensee's place of business falls or situated within a radius of 5 kms. of the retail outlet of a government run oil company.

It is not disputed that the method of grant of licence as well as the conditions of licence and its renewal are provided in the statutory order framed under the Essential Commodities Act. Clause 2(d) of the statutory order provides that '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 both but does not include an oil company. Clause 2(h) of the statutory order provides that the 'licensee' means a dealer holding a licence granted under the provisions of this Order. Clause 4 of the statutory order further provides that for grant or renewal of a licence an application in Form 'B'

A attached to the Order, shall be given to the licensing authority. Every licence granted or renewed under this Order shall be in Form 'C' and shall be subject to the conditions specified therein. Clause 8 of the statutory order further provides that the licensing authority may, for reasons to be recorded in writing, suspend or cancel any licence if it is satisfied that the licensee has contravened any provisions of this order or the conditions of the licence or any direction B issued thereunder. It is not disputed that the respondent was granted licence under the statutory order. Form 'B' attached to the statutory order does not show that the licence to vend Diesel Oil can be refused if the applicant has place of business within the radius of 5 kms. of a retail outlet. Similarly, neither Clause 4 nor Form 'C' attached to the statutory order provides that C no licence shall be renewed if the place of business of a licencee falls within a radius of 5 kms. of a government retail outlet.

It is, therefore, manifest from the provisions of the statutory order that in so far as conditions of grant of licence for sale of Diesel Oil and its renewal are concerned, the statutory order is a complete code in itself and D there is no provision in the statutory order under which a licensing authority could refuse to renew a licence if licensee's place of business falls within a radius of 5 kms. of a government run retail outlet.

Coming to the main argument as to whether such an order or direction could be issued either by the State government or licensing authority under E sub-clause (6) of Clause 16 of the statutory order, it is necessary to look into the provisions of sub-clause (6) of Clause 16 of the statutory order which runs as under:

> "(6) Every dealer shall comply with the general or special directions F not inconsistent with this order that may be given to him in writing by the State Government, the Commissioner, Food and Civil Supplies or the Collector for the purpose of giving effect to the provisions of this Order and any contravention of such directions shall be deemed to a contravention of this Order."

G A perusal of sub-clause (6) shows that it enables the making of an order or issuing of direction by the executive. In exercise of that power, the State government, the Commissioner, Food and Civil Supplies or the Collector are empowered to issue a general or special direction to any dealer, which is not inconsistent with the provisions of the statutory order, only for giving effect to the provisions of the statutory order. Thus, there are two restrictions H on the power of the State government or a licensing authority while issuing

a general or special direction - firstly, such a direction should not be inconsistent with the statutory order and secondly, such direction can be issued only for purposes of giving effect to the provisions of the statutory order. In that view of the matter any direction issued under sub clause (6) of Clause 16 must show that it complies with the description of delegation of power to issue directions.

In Black's Law Dictionary the expression 'inconsistent' means lacking consistency; not compatible with. Viewed in this light, the nature and extent of power the State government or a licensing authority possessed under sub-clause (6) is to issue directions only in conformity with the statutory order. In other words, the direction so issued by the State government or licensing authority must be compatible with the provisions of the statutory order. The State Govt. or the licensing authority in the exercise of delegated powers to issue direction cannot make provisions which are inconsistent with the statutory order. Since the power to issue directions by the State government or any other specified authorities must not be inconsistent with the statutory order, any direction issued if found not in conformity with the provisions of the statutory order, the same must be held to be beyond the enabling provisions of the statutory order. It must be remembered that the power to issue directions is derived from sub-clause (6) of Clause 16 of the statutory order and a delegatee on whom such a power is conferred is required to act within the framework of the authority conferred by the statutory order. Since the direction issued by the licensing authority that the licence of the respondent shall not be renewed on the premise that his place of business falls within a radius of 5 kms. of retail outlet of a government run oil company being not in conformity with the provisions of the statutory order, it must be held to be inconsistent to the provisions of the statutory order.

Coming to the second restriction on the power of the State government or the specified authorities, the provisions empowering them to issue directions to dealers could be exercised only to give effect to the provisions of the statutory order and further to effectuate the object behind the statutory order if the object is discernable in the statutory order. The nature of directions which could be issued under the enabling provisions contained in sub-clause (6) of Clause 16 of the statutory order, is only for purposes of giving effect to the statutory order and not otherwise. The conditions of grant of licence 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 a view to give effect to the provisions of the statutory order. The State government or the licensing authority while giving effect to the provisions of the statutory order is not authorised to amend the statutory order by issuing directions. Once the enabling provisions restrict the power of issuing direction only for giving effect to the provisions of the statutory order, the nature and extent of direction which the State government or any authority specified B therein are empowered to issue is confined to the area which is marked out by the statutory order. In the present case what we find is that the licensing authority while issuing the direction that the respondent's licence shall not be renewed on the premise that his place of business falls within a radius of 5 kms. of a retail outlet of government run oil company has, in fact, purported C to amend the conditions of renewal of licence granted under the statutory order which was not permissible under sub-clause (6) of Clause 16 of the statutory order.

We have already noticed that the provisions of the statutory order do not provide for refusal to renew a licence granted under the statutory order, D if the place of business of a licensee falls within a radius of 5 kms. of a government run retail outlet. Further, the statutory order neither expressly nor by necessary implications prohibit the grant of licence to a person or refusal to renew such a licence if the place of business of such licensee falls within the radius of 5 kms. of a government run retail outlet. In that view of the matter, the direction/order issued by the licensing authority refusing to E renew the licence of the respondent was inconsistent with the provisions of the statutory order inasmuch as the same was not for purposes for giving effect to the statutory order and, therefore, such a direction/order could not have given effect to, while considering the renewal of licence of the respondent herein.

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For the aforesaid reasons, we are in agreement with the view taken by the High Court. Consequently, we do not find any merit in these appeals and the special leave petitions which are, accordingly, dismissed. There shall be no order as to costs.

G N.J. Appeals and Petitions dismissed.