

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.137 of 2014

ORDER:

Heard Mr.B.Mayur Reddy for petitioner, the Assistant Government Pleader for Revenue and Sri S.Srinivas Reddy for respondents 4 to 9.

The petitioner challenges Proceedings Rc.No.C5 (M)/1078/2013, dated 15.12.2013 cancelling NOC granted in favour of petitioner for Door No.299/1-2 in Ward No.15 at Nellore Municipal Corporation in an extent of 85-06 Ankanams for running retail outlet, as illegal, contrary to Petroleum Rules, 2002, arbitrary and unconstitutional.

The circumstances relevant for disposal are stated thus:-

The petitioner was granted lease in an extent of 96 Ankanams in T.S.No.248, Ward No.15, Greater Northern Trunk Road, Brindavanam, Nellore, to run an outlet from 01.04.1963 to 31.03.1972. The petitioner it is averred established a retail outlet for selling its products and by exercising statutory option of renewal, extended the lease from 01.04.1972 to 31.03.1982 vide lease agreements dated 19.04.1988 and 09.10.1990 executed by erstwhile owners of the subject matter of writ petition. The lease was extended and the admitted circumstance vis-à-vis the lease period is that the petitioner had valid lease from 01.04.1982 to 31.03.1997 and thereafter neither a lease granted nor renewal of lease given to petitioner. However, without a formal deed of

lease or renewal, the petitioner has been running the outlet. While the matter stood thus, in the year 1993, the petitioner granted dealership of the subject outlet in favour of I.R.K.Reddy and Sons. The partners of the firm purchased the subject matter of writ petition from the owners through Sale Deeds dated 09.05.1997 and 29.08.2003. The fact of the matter is that though the partners of I.R.K.Reddy and Sons have purchased the subject land still the lease agreement was not executed by the partners in favour of petitioner's company. Form-B licence issued under Petroleum Rules stands in the name of I.R.K.Reddy and Sons. I.R.K.Reddy and Sons/the dealer of petitioner, on 10.05.2013 applied to respondents 2 and 3 for cancelling B-Form licence No.3/86 on the ground that there is no lease agreement between the dealer and owner of land and the Oil Company (petitioner) since long time.

The 3rd respondent issued notice in Rc.C.442/2013 dated 31.08.2013 to petitioner and the notice reads as follows :-

“I invite attention to the reference cited, wherein M/s.I.R.K.Reddy & Sons, Brindavanam, Nellore while surrendering the B Form Licence No.3/86 in original, have stating that they are the Joint owners of the site occupied by the HPCL at Subedarpet, Nellore being run by IRK Reddy & Sons, Nellore and that due to business transactions, they have jointly sold away the outlet site to Sri N.Ravi Kumar and 5 others and finally requested to cancel the B Form Licence No.3/86 as there is no lease agreement between the dealer and owner of land and Oil Company since long back.

In view of the above, it is requested to furnish your remarks on the representation of M/s.IRK Reddy & Sons, Nellore for taking necessary action in this regard.”

On 13.09.2013, the Senior Regional Manager (Retail) and Duly Constituted Attorney of petitioner filed reply before the 3rd respondent.

For appreciating the legal objection raised by petitioner, the Court finds it convenient to excerpt the operative portion of reply, dated 13.09.2013, which reads as follows :-

“M/s.I.R.K.Reddy & Sons is Our Company Owned retail outlet in Nellore city. Though the lease agreement with the land owners has expired, we are willing to renew the same for further term. We have taken a serious note of representation from our dealers for cancellation of Form B and we shall be taking appropriate action against the dealership.”

The 2nd respondent bearing in view reply, dated 13.09.2013 issued another notice to petitioner on 31.10.2013 and the notice refers to proposing to initiate action for not having right to hold the property. The operative portion of notice dated 31.10.2013 reads as follows :

“It has been proved that the retail outlet under the fold of HPCL is running on without site lease renewal agreement by M/s.I.R.K.Reddy & Sons. Hence, it is hereby directed to show cause notice why action should not be initiated for non-site lease renewal agreement from 01.04.1997 to till date within 7 days from the date of receipt of this notice and if no explanation is received within the time limit decision will be taken basing on the material available as per records.”

On 07.11.2013, the petitioner has given a brief reply but has requested the 3rd respondent to consider the reply given on 13.09.2013 and requested not to take any action on the notices, referred to above.

The 3rd respondent through the proceedings impugned in the writ petition cancelled the NOC granted for running the outlet. Hence, the writ petition.

The present owners of the subject matter of writ petition were added as respondent Nos.4 to 9 vide order in W.P.M.P.No.1751 of 2014 dated 07.04.2014 and are opposing the writ prayer.

Briefly stated, the case of respondents is that there is no document evidencing either renewal or subsistence of lease in favour of petitioner from 01.04.1997 which is a mandatory condition for granting or renewing Form-B licence. The partners of I.R.K.Reddy and Sons though have purchased the property from M.Ratnamma and B.Shantamma have not executed lease in favour of petitioner's Corporation. However, under the dealership arrangement, I.R.K.Reddy and Sons were given Form-B licence and they were running the outlet. I.R.K.Reddy and Sons being the Form-B licence holders applied for cancellation of Form-B licence No.3/1986. On the request made by I.R.K.Reddy and Sons, the 3rd respondent issued notice to the petitioner proposing to cancel Form-B licence. The 3rd respondent after

verifying the reply, dated 13.09.2013, notice dated 31.10.2013 was issued adverting to necessary action vis-à-vis subject land for not having all documents. Briefly stated, the case of respondents is that there is no lease agreement in favour of petitioner Company right from 1997. The licence was granted through Proceeding D.Dis.No.781/2010 for the period 01.01.2011 to 31.12.2013. On 15.12.2013, the NOC granted in favour of petitioner's company has been cancelled. The respondents place reliance on the decisions of this Court in W.P.No.10428 of 2008, dated 06.01.2012 and W.A.No.1204 of 2012, dated 22.04.2013 and pray for dismissing the writ petition.

According to respondents 4 to 9, the challenge to proceeding dated 15.12.2013 is completely untenable and the objection that the petitioner is not given reasonable opportunity is unsustainable in law and fact.

The Assistant Government Pleader relies on the stand taken by respondents 2 and 3 in the counter affidavit and contends that the petitioner having regard to the admission given in the reply filed before respondents 2 and 3, cannot take objection in isolation to the admitted fact situation of the case. In other words, it is not disputed that either for grant or continuance of NOC, one of the requirements is to possess the right to site by the petitioner company. Whether it was brought to the notice of respondents 2 and 3 or not but the petitioner as admitted in the

correspondence, does not have right to site from 1997 onwards. The 3rd respondent has issued two notices and the notices do refer to the inherent defect in continuation of NOC in favour of petitioner's company.

According to Assistant Government Pleader reasonable opportunity, as matter of fact, is provided and the petitioner without Form-B licence or right to site cannot challenge the proceedings by merely relying on the words reasonable opportunity stated in the Rules. He prays for dismissing the writ petition.

Now the point for consideration is whether the proceedings impugned in the writ petition are valid and passed in conformity with the requirements of Rule 150 of Petroleum Rules, 2002.

Rule 150 of Petroleum Rules, 2002, reads as follows :-

Cancellation of no-objection certificate:- (1) A no-objection certificate granting under rule 144 shall be liable to be cancelled by the District Authority or the State Government, if the District Authority or the State Government is satisfied, that the licensee has ceased to have any right to use the site for storing petroleum;

Provided that before cancelling a no-objection certificate, the licensee shall be given a reasonable opportunity of being heard.

(2) A District Authority or a State Government cancelling a non-objection certificate shall record, in writing, the reasons for such cancellation and shall immediately furnish to the licensee and to the licensing authority concerned, copy of the order cancelling the no-objection certificate."

The objection now is that the notice issued for cancelling Form-B licence cannot be treated as an opportunity afforded by 3rd respondent for cancelling 'No Objection Certificate' issued in favour of petitioner Company. The submission is merely noted to be rejected.

In the case on hand, as already noted, the respondents before issuing the proceedings impugned have issued two notices to petitioner. The petitioner admits the defect or deficiency in continuing to have either NOC or Form-B licence under Rules. The explanation that the Corporation is prepared to obtain lease agreement from the owners on mutually agreed terms and conditions cannot be a matter for further enquiry to afford opportunity in an enquiry to recall NOC granted for running an outlet. Short of admitting that the petitioner is unable to comply with the requirements for having NOC, a mere explanation is offered by petitioner. The explanation is considered and reasons for recalling the NOC are recorded by 3rd respondent.

For the reasons that the Form-B licence holder applied for cancellation of Licence No.3/86, wherein it was brought to the notice of respondents 2 and 3 that right from 1997, the petitioner does not have a valid agreement, the NOC is rightly recalled through the proceedings impugned in the writ petition. The

second notice refers to not having right to site and the consequences of such admitted situation.

I am not persuaded by the submission canvassed by Mr.B.Mayur Reddy in this behalf. The contention fails and is accordingly rejected.

Learned Standing Counsel after the order is dictated submits that through e-mail dated 13.09.2017 he has been instructed to request six months time for vacating the premises and handing over the premises to respondents 4 to 9. Though some resistance is offered by the counsel for respondents 4 to 9 that six months time is again too long for vacating a non-functional outlet, I have taken note of the difficulties expressed by the petitioner counsel and to conform to the requirements of other enactments also, this Court grants six months time from today for vacating and handing over possession to respondents 4 to 9.

The writ petition is accordingly dismissed with the above observations. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

S. V. BHATT, J

Dt: 18.09.2017
Prv

