
(2008) 11 PAT CK 0031
In the Patna High Court
Case No : CWJC No. 13393 of 2008

Abdul Rauf @ Sri Md. Abdul Rauf

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 12-11-2008

Acts Referred:

Citation : (2009) 2 PLJR 784

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : N.K. Agarwal, D.N. Tiwari and Sanjeev Kr. Sharma, for the Appellant; Kumar Udai Bhanu Rai, for the Respondent

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—The petitioners are retail licensee under the provisions of the Bihar Trade Articles Licences Unification Order, 1984 framed and issued under the provisions of the Essential Commodities Act, 1955. The Licensing Authority under the aforesaid order is the Sub-Divisional Officer. Petitioners as a retail dealer are also functioning as a dealer under the public distribution system. It appears that an inspection was conducted at the petitioners' premises and certain irregularities were found. Ultimately, the licenses of the petitioners have been cancelled and the order of cancellation is Annexure-6, under the signature of the Licensing Authority, who is the Sub-Divisional Officer, Araria. At the first instance, this Court felt that it was the matter that the petitioners who ought to have been adjudicated in appeal, an appeal lay from such an order. But, Mr. N.K. Agarwal, learned Senior Counsel appearing in support of the writ petitions drew my attention to a complete order sheet of the case, which is contained in Annexure-5. Now, perused the order sheet, I am afraid, it depicts a very sorry state of affairs, it is too late in the day to urge that the power being exercised by the Sub-Divisional Officer, as the Licensing Authority is not a quasi-judicial power. If it is a quasi-judicial power then it is well established that it is he, who has to initiate the proceedings and consider the matter and it is he, who has passed

orders, a quasi-judicial order or quasi-judicial proceeding cannot be carried out as a regular office proceedings. It is an exercise of statutory powers having severe civil consequences. The order sheet depicts that first the Office of the Sub-Divisional Officer receives the enquiry report and recommends initiation of proceedings by issuance of show cause. This is placed before the Sub-Divisional Officer, who agrees with the Office notings and orders for issuance of show cause. The draft of which the Office is to prepare then gets the draft and orders the same to be issued when he receives a recommendation from the Office to suspend the licence. He approves the stand and order of suspension. Then, after show cause is received again Office processes the same. There is a lengthy endorsement of the Office staff ending with a finding that the dealer is guilty and thus the matter is placed for orders before the Sub-Divisional Officer. The Sub-Divisional Officer merely endorses the Office notings that the licence may be cancelled. Regrettably, this is not the end. The cancellation order then is drawn up by the Office and the draft is then approved by the Sub-Divisional Officer and that is what is communicated to the petitioner looking to be an order of Sub-Divisional Officer.

2. Learned counsel for the State submits that even while accepting the proposal of the Office, the Sub-Divisional Officer has to apply his mind and as such there is application of mind. In my view, the submission is noted only to be rejected. Such a procedure as noted above is impermissible in a quasi-judicial proceeding.

3. In my view, this entire procedure is destructive of how a quasi-judicial proceeding the Officer has to conduct the proceedings himself. He has to apply his own mind to all aspects of the matter. Here, he has done nothing but approve the recommendations and the orders as drawn up by the Office. Here, I may notice that this is not the first time such an action is taken by a Licensing Authority in this State. Reference may be made to the case of Bishwanath Kejriwal vs. State of Bihar & Another, 1988 BRLJ 135:1988 PLJR 1100, wherein, under similar circumstances Justice S.B. Sinha (as he then was) held that such procedure was not permissible. There on Office notings prepared by the Office, the Sub-Divisional Officer had appended the note "Yatha Prasthawit" meaning thereby "as proposed". Similar views have been taken by this Court in CWJC No. 6475 of 1994 disposed of on 30.8.1994, a judgment of Division Bench presided by Justice B.N. Agrawal (as he then was). In that view of the matter, the order in question cannot be sustained and is quashed accordingly. The writ petitions are allowed.