

(2012) 07 JH CK 0214

In the Jharkhand High Court

Case No : Writ Petition (C) No. 1062 of 2012

Aditya Kumar Mishra

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 02-07-2012

Acts Referred:

Citation : (2013) 1 AJR 484 : (2012) 4 JLJR 269

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : Nivedita Kundu, for the Appellant;

Judgement

N.N. Tiwari, J.—The petitioner has challenged the order dated 11.9.2008 (Annexure-5) passed by the Sub-Divisional Officer, Khunti, whereby he has cancelled the Fair Price Shop license of the petitioner and also the order dated 16.1.2012 (Annexure-7) passed by the Deputy Commissioner, Khunti dismissing the petitioner's appeal. Learned counsel appearing on behalf of the petitioner submitted that the impugned orders are mechanical, illegal and wholly without jurisdiction. The said orders have been passed without complying with the mandatory provision of law.

2. It has been submitted that Clause-11(2) of the Bihar/Jharkhand Trade Articles (Licenses Unification) Order, 1984 provides for giving reasonable opportunity to the license to file his reply against the proposed cancellation. But only three days" time was given to the petitioner for filing reply to the show-cause. Giving only three days" time is itself contrary to law and blatant violation of principle of natural justice, inasmuch as the licensing authority has illegally held that since reply has not been received within three days, it is deemed that the allegation has been admitted by the petitioner. On the said presumption the petitioner's valuable right has been denied and license has been cancelled by a cryptic order.

3. The petitioner filed appeal before the Deputy Commissioner, Khunti taking several grounds but learned Deputy Commissioner, Khunti also repeated the

order of the licensing authority and dismissed the appeal without judicious application of mind.

4. It has been further submitted that the order of the licensing authority and the order of appellate authority, having been passed in violation of the prescribed rules and without application of mind and recording speaking reasons, are non est and liable to be quashed by this Court.

5. The respondents have contested the writ petition by filing counter affidavit. However, in counter affidavit the respondents have only supported the impugned orders without meeting the grounds of the violation of law and principle of natural justice, taken by the petitioner.

6. I have heard learned counsel for the parties and considered the facts and materials on record.

7. On perusal of the order of the Licensing Authority dated 11.9.2008 (Annexure-5), I find that the petitioner was given only three days" time to file his reply and thereafter order of cancellation has been passed only on the ground that non-filing of reply by the petitioner amounts to admitting the allegation. In the writ petition it has been stated by the petitioner that the main allegation leveled against him is that when the inspection was made, the shop was closed. It has been stated that the date on which the shop was inspected, the petitioner was seriously ill and for that reason he could not open the shop. The petitioner was not given due opportunity to place the facts and produce the evidences and without giving him the opportunity of hearing and filing his reply, the said mechanical order has been passed by the Sub-Divisional Officer cancelling the petitioner"s license.

8. Further, on going through the order of the appellate authority (Annexure-7) I find that the grounds taken by the petitioner have been ignored and the Deputy Commissioner has simply repeated almost the same order of the licensing authority and dismissed the appeal.

9. It is well settled that valuable right of a person cannot be taken away without following the procedure prescribed by law and without affording proper opportunity of representation/hearing.

10. In the instant case, licensing authority has allowed only three days" time for filing reply, while the petitioner was ill. The prescribed rule clearly provides for giving reasonable opportunity for filing reply against the notice for the proposed cancellation of licence. In the instant case, the notice giving three days" time for filing reply is wholly unreasonable and arbitrary. Impugned order (Annexure-5) cancelling the petitioner"s licence on the ground that non-filing of reply by the petitioner amounts to admission of allegations is also contrary to law.

11. The impugned order contained in Annexure-5 is, thus, wholly illegal and violative of principle of natural justice and is not sustainable in law. The order of the appellate authority, being cryptic, non-speaking and mechanical and passed

without application of mind upholding the order of the licensing authority, is also illegal and unsustainable. For the reasons aforesaid, this writ petition is allowed. The order dated 11.9.2008 (Annexure-5) passed by the Sub-Divisional Officer, Khunti and the order dated 16.1.2012 (Annexure-7) passed by the Deputy Commissioner, Khunti are quashed.