
(2000) 04 PAT CK 0004
In the Patna High Court
Case No : C.W.J.C. No. 5856 of 1999

Baiju Prasad and Another	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 24-04-2000

Acts Referred:

Citation : (2000) 3 PLJR 321

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Advocate : N.K. Agrawal, for the Appellant; Ram Subhas Singh, for State, for the Respondent

Final Decision : Allowed

Judgement

S.N. Jha, J.—The Petitioners are aggrieved by the order of cancellation of their licences contained in Annexure-4. Though the said order has been issued by the Sub Divisional Officer, Mahua it has been ex facie passed in the light of the order of the District Magistrate, Vaishali dated 19.4.99 and the wireless message sent by his Personal Assistant communicating the gist of the order.

2. The submission of the counsel for the Petitioners is that the Petitioners being retail licensees, the licensing authority is Sub Divisional Officer and the District Magistrate has no power to direct cancellation of the licence. Counsel for the State submitted that formal order of cancellation of licence having been issued by the Sub Divisional Officer, the impugned order does not suffer from any illegality.

3. It is not in dispute that with respect to retail dealers the licensing authority under the Bihar Trade Articles (Licences, Unification) Order, 1984, is Sub Divisional Officer and where such licensing authority cancels the licence, appeal lies to the District Magistrate.

4. The law on the point is well settled that where power is vested in a statutory authority power has to be exercised by that statutory authority and by none else

including the superior authority. Reference may be made to cases of Commissioner of Police, Bombay Vs. Gordhandas Bhanji, and The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others, .

5. Even though the impugned order has been ex facie issued in the light of the order of District Magistrate and the wireless message sent by his P.A. this Court wanted to satisfy itself about the contents of the said order/message as to whether he had issued a general direction or passed specific order in the matter of cancellation of licence. Counsel for the State has produced the relevant records. Though order dated 19.4.99 (supra) is not presently available in the file, the wireless message of the P.A. to the District Magistrate is available at page 29, from which it is clear that the District Magistrate had passed a clear order directing the Sub Divisional Officer for cancellation as the show cause submitted by the Petitioners was not found to be satisfactory. It is also well settled that the show cause has to be considered by the licensing authority and he is not supposed to pass any order on the basis of consideration by any other authority. The impugned order, therefore, suffers from error on two counts and I have no hesitation in quashing the order.

6. The order of cancellation of licence with respect to the Petitioners, contained in Annexure-4, is accordingly quashed and the writ petition is allowed accordingly.