
(2015) 01 JH CK 0023

In the Jharkhand High Court

Case No : Writ Petition(C) No. 3721 of 2013

Baldeo Choudhary Bijay Kumar

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 07-01-2015

Acts Referred:

Citation : (2015) 2 JLJR 16 : (2015) 1 AJR 660

Hon'ble Judges : S. Chandrashekhar, J.

Bench : Single Bench

Advocate : Manoj Tandon, for the Appellant; Suchitra Pandey, J.C. to G.P. V, Advocates for the Respondent

Final Decision : Allowed

Judgement

S. Chandrashekhar, J.—Aggrieved by order dated 18.05.2010 passed by the Deputy Commissioner-cum-District Magistrate, Ranchi and order dated 25.05.2013 passed by the Divisional Commissioner, South Chotanagpur Division, Ranchi in Misc. Appeal No. 37 of 2010, the present writ petition has been filed.

2. Briefly stated, the facts of the case are summerised thus;

"The petitioner was granted license bearing No. 311 of 1984 for wholesale dealership of kerosene oil and the license was renewed from time to time. On 06.05.2010, a show-cause notice was issued to the petitioner which was replied by the petitioner on 07.05.2010, denying the charges in the show-cause notice dated 06.05.2010. However, licensing authority cancelled License No. 311 of 1984 vide order dated 18.05.2010. The petitioner preferred appeal against order dated 18.05.2010, which was numbered as Appeal No. 37 of 2010 however, the said appeal was not decided expeditiously and therefore, the petitioner approached this Court in W.P.(C) No. 5433 of 2010. The writ petition was disposed of vide order dated 22.11.2011 directing the appellate authority to dispose of the appeal preferred by the petitioner within three months. The appeal preferred by the petitioner was dismissed vide order dated 17.01.2012,

challenging which the petitioner filed W.P.(C) No. 945 of 2012. This Court vide order dated 08.01.2013 set-aside the appellate order dated 07.01.2012 and directed the Divisional Commissioner-appellate authority to pass a fresh order. Accordingly, the appeal was heard by the Divisional Commissioner, Ranchi and vide order dated 25.05.2013, order of cancellation dated 18.05.2010 was affirmed. In these facts, the petitioner has approached this Court." 3. A counter-affidavit has been filed stating that in spot enquiry of the petitioner's business premises, it was found that the wholeseller had supplied less quantity of kerosene oil to 7 thala vendors and neither proper fire-fighting equipment nor electronic measurement instrument was installed in the business premises. On the basis of report of spot verification, after issuing show-cause notice to the petitioner, the license was cancelled vide order dated 18.05.2010 and finally, it has been affirmed by the appellate authority. In view of terms and conditions of license, the licensee is required to supply commodity in proper quantity/weight on prescribed price to the kerosene oil vendors. The licensee is also required to arrange safety measures including fire safety measures.

4. Heard learned counsel appearing for the parties.

5. Mr. Manoj Tandon, the learned counsel appearing for the petitioner submits that the ground taken by the respondent-Deputy Commissioner for cancellation of license is not sustainable. Without taking measurement of the stock and without any evidence that the measuring instrument was either faulty or not proper, it cannot be concluded that the petitioner supplied less quantity of kerosene oil to the vendors. It is further submitted that the penalty of cancellation of license is disproportionate to the alleged charges levelled against the petitioner and therefore, order dated 18.05.2010 is liable to be quashed. It is further submitted that the order passed by the Divisional Commissioner-appellate authority also suffers from non-application of mind, in as much as, the specific plea taken by the petitioner has not been considered. For the above reasons, it is submitted that, the order cancelling License No. 311 of 1984 is liable to be quashed.

6. As against the above, Ms. Suchitra Pandey, J.C. to G.P. V, the learned counsel appearing for the respondents submits that the allegations against the petitioner are serious. The petitioner continued to cheat the vendors over a long period of time and when on the complaint made by the vendors, a spot verification was conducted, it was found that the petitioner had supplied less quantity of kerosene oil. Besides this, the petitioner had failed to install fire safety equipment in the business premises due to which, a disaster might have occurred. No electronic measurement instrument was installed in the business premises of the petitioner and therefore, the order cancelling license of the petitioner has rightly been passed. It is further submitted that the orders impugned in the present proceeding are well reasoned and well discussed orders and no interference is required in the matter by this Court.

7. I have carefully considered the submission of the learned counsel for the

parties and perused the documents on record.

8. It is not in dispute that the license bearing No. 311 of 1984 was issued about 30 years back and till 06.05.2010, there was no complaint against the petitioner. In the counter-affidavit filed in the present proceeding, the respondents have stated, "It is accepted that there is no complaint against the above said license prior to this complaint". On a pointed query, whether any written complaint was received on 05.05.2010, the learned counsel for the respondent-State of Jharkhand admits that it was only on the basis of oral complaint, the spot verification was conducted. Insofar as, supplying less quantity of kerosene oil is concerned, I find that the petitioner was to supply 200 litres of kerosene oil to each hawker. When the containers of the hawkers were measured, in seven cases less quantity of kerosene oil has been found. The less quantity said to have given to the hawkers, is as less as 1.5 litres in two cases, 2 litres in one case and the maximum quantity of less supply was 11 litres. The petitioner has submitted verification report of Weight and Measurement Controller to assert that the measuring instrument is correct and proper. It is also an admitted position that the measuring instrument was not verified during the spot verification nor this aspect of the matter has been considered either by the Deputy Commissioner or by the appellate authority. In the re-joinder affidavit, the petitioner has specifically taken a plea that the grounds raised by the petitioner in the writ petition have not been answered by the answering respondent and thus, the statements which have not been denied or disputed, should be deemed to have been admitted by the answering respondent. It further appears that the stock at the business premises of the petitioner was not verified and the spot verification was conducted more than two hours after the petitioner supplied kerosene oil to the vendors, who had already left the business premises of the petitioner. I find substance in the contention of the learned counsel for the petitioner that after the vendors/hawkers left the business premises of the petitioner, any deficit in the kerosene oil in their containers cannot be linked with less supply of kerosene oil by the petitioner. Moreover, the large variation in the deficit quantity of kerosene oil, as noticed above, probablises the defence of the petitioner.

9. Insofar as, installation of fire extinguisher equipment and installation of underground tank are concerned, in the counter-affidavit, it has been admitted by the respondents that the petitioner produced cash-memo of refilling of fire extinguisher equipment and no objection certificate for installation of underground tank. I further find that, though the license was issued in the year, 1984, for the first time in the show-cause notice dated 06.05.2010, this deficiency has been noticed by the respondent authority. I am of the opinion that for these deficiencies, an opportunity was required to be given to the petitioner to install the same instead of cancelling the license on the above grounds. Insofar as, allegation of less supply of the kerosene oil to the hawkers/vendors is concerned, I find that in view of the materials brought on record, the charge against the petitioner is not proved. The cancellation of license entails not only civil but evil consequences also and therefore, the order of cancellation of license

can be passed only on the basis of sufficient evidence of misconduct/irregularity committed by a licensee. I am of the definite opinion that the order of cancellation dated 18.05.2010 is not based on proper appreciation of the facts and circumstances of the case. The specific plea raised by the petitioner, which has been admitted in the counter-affidavit filed in the present proceeding, leads me to conclude that the orders impugned in the present proceeding are liable to be quashed.

10. In view of the aforesaid discussion, the present writ petition is allowed. The impugned orders dated 18.05.2010 and 25.05.2013 are quashed. The respondent-Deputy Commissioner is directed to restore the license of the petitioner, if the wholesale dealership of kerosene oil has already not been awarded to any other allottee.