
(2007) 03 OHC CK 0053
In the Orissa High Court
Case No : Writ Petition (C) No. 6011 of 2005

Bhabagrahi Sahoo

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 05-03-2007

Acts Referred:

Citation : (2007) CLT 688 Supp : (2007) 1 OLR 542 : (2007) OLR 688 Supp

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : M.K. Das, for the Appellant; Additional Government Advocate, for the Respondent

Judgement

A.S. Naidu, J.—The Petitioner was appointed as Kerosene Sub-wholesaler in respect of Brahman Sailo under Kantapada block in the district of Cuttack. On 17.5.2004 he received an order of suspension of his aforesaid Sub-wholesale licence from the Civil Supplies Officer, Cuttack, vide Annexure-3. The said order revealed that the Collector, Cuttack had been pleased to suspend his licence on account of following irregularities detected by the State Enforcement Squad:

- (1) He had shown sale of 1,000 litres of K. oil in Hat @ 100 litres on each Hat day during the period from 23.7.03 to 27.8.03 without maintaining sale account;
- (2) He had issued excess/less quantity of K. oil to the retailers during the period from July, 03 to Oct. 03; and
- (3) He had issued K. oil to the non-card holders without maintaining books of account properly.

2. By the said order Annexure-3 he had been directed to show cause as to why his K. oil sub-wholesale licence would not be cancelled on account of the aforesaid lapses. He showed cause explaining that he had been called upon by the concerned Inspector of Supplies, Kantapada to sell K. oil on each Hat day. The said Inspector being a Departmental officer, the Petitioner stated, as per his

instructions he having sold 1,000 K. oil at the rate of 100 litres on each Hat day, had committed no irregularity. So far as other irregularities pointed out he stated that those were not correct and opportunity given he would establish that he had not committed any such irregularities as alleged. Surprisingly, according to the Petitioner, without considering his show-cause reply by order dated 7.10.2004, vide Annexure-6, the Collector was pleased to cancel his K. oil sub-wholesale licence with immediate effect. Being aggrieved against the said order Annexure-6, the Petitioner preferred an appeal before the competent authority, but the said appellate authority vide order dated 2.4.2005, vide Annexure-7, confirmed the order of the Collector, Annexure-6.

3. According to the Petitioner, he was not given any opportunity of hearing nor was the Inspector of Supplies concerned called upon to test the veracity of the statement of the Petitioner. The authorities did not take the pains to verify the relevant records vis-a-vis the explanation of the Petitioner which would have clearly established that the Petitioner did commit no irregularity as alleged. It is averred that the orders Annexure-6 and 7 having been passed on extraneous consideration, are liable to be quashed.

4. Learned Addl. Govt. Advocate appearing for the opposite party-authorities at the other hand submitted that the Petitioner had admitted his guilt before the appellate authority and, therefore, the orders Annexures-6 and 7 were well justified.

5. After hearing the submissions of the learned Counsel for both sides and perusing the materials on record, this Court finds that the order of the appellate authority, Annexure-7, reveals that the Petitioner in his show-cause reply had stated "I would therefore request you to excuse me for the first time if any lapses are said to have been committed by me." This Court observes that the aforesaid statement of the Petitioner cannot be treated as admission of guilt by him and rather he had stated that if any lapses were found against him he might be pardoned. In fact the authorities concerned did not verify the relevant materials to arrive at the conclusion whether the Petitioner had in fact committed the irregularities as alleged. The concerned Inspector of Supplies who was a responsible Government officer and the key witness was not examined nor any report was called for from him.

6. Law is well settled that to prevent miscarriage of justice, the person likely to be affected has to be given reasonable opportunity of being heard. Such hearing must be genuine and not an empty formality. The authority concerned should also rely upon the materials produced before him. In the present case, affording such opportunity of hearing is inbuilt in the provisions of the Act, even though the Act does not specifically spell out that. Law is also well settled that no order by which the right of an individual is affected or stripped off can be passed without following the principles of natural justice and without affording an opportunity of hearing, as has been observed by the Supreme Court in the famous case of Menaka Gandhi.

7. Considering the facts and circumstances and in view of the aforesaid discussion, this Court feels that the orders of the Collector and the appellate authority, vide Annexures-6 and 7 having been passed without following the principles of natural justice and equity cannot be sustained and are liable to be quashed. Be that as it may, by efflux of time the period of K.oil sub-wholesale licence of the Petitioner has lapsed. No order can be passed by this Court to revalidate the said licence. Therefore this Court disposes of the Writ Petition quashing the orders Annexures-6 and 7 issuing direction that in the event fresh K. oil sub-wholesale licence will be issued in future, the Petitioner will be at liberty to again apply and his application shall be considered by the authorities concerned in consonance with law without taking note of the orders Annexures-6 and 7, or being prejudiced thereby.