

(2007) 01 JH CK 0056
In the Jharkhand High Court

Bimal Kumar and Bhola Prasad Mahto	APPELLANT
Vs	
The State of Jharkhand and Others	RESPONDENT

Date of Decision : 18-01-2007

Acts Referred:

Citation : (2007) 01 JH CK 0056

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Judgement

Ramesh Kumar Merathia, J.—Heard the parties for final disposal of the cases. These writ petitions involving similar questions are "being disposed of by this common order.

2. In these writ petitions and by way of amendment petitions (I.A. No. 2330 of 2006 filed by Bimal Kumar & I.A. No. 2331 of 2006 filed Bhola Prasad Mahto), the petitioners have challenged the Memo No. 1056 dated 17.7.2004 (Annexure 4) and also the order dated 12.2.2005 (Annexure 2) by which the petitioners" licence under the Bihar Trade Articles (Licenses Unification) Order, 1984 (Licensing Order for short) and the agreement of fair price shop has been cancelled.

By Annexure 4, the Secretary (respondent No. 2) issued notices to the local officers to show cause about their dereliction in duties as several irregularities were found in the Public Distribution System (PDS for short) by the inspecting team of higher officers. A copy of the inspection report was also annexed with a direction to the local authorities to initiate proceedings for cancellation of dealership licence and fair price shop agreements of the dealers, who were found violating the terms of the licence and the fair price shop agreements, and to blacklist them.

3. Mr. B.K. Dubey, learned Counsel for the petitioners, submitted that when the Secretary, (respondent No. 2) himself has recommended to cancel the licences and fair price shop agreements; then the proceedings/orders of cancellation of

licence; filing appeal, revision are all empty formalities. He further submitted that the petitioner's case is squarely covered by the order dated 10.7.2006 passed in W.P. (C) No. 6323 of 2005 *Mundrika Ram v. State of Jharkhand*. He further submitted that the alleged inspection was done on 21.1.2004 but the said memo/order (Annexure 4) was issued after more than one and half years i.e. on 17.8.2005.

4. State counsel submitted that as per the direction of the Chief Secretary and in terms of Clause 30 of the Licensing Order; and in order to verify whether the Public Distribution System through the fair price shops is working properly or not, a team of high officials inspected various fair price shops between 15.1.2004 to 22.1.2004. During course of inspection, several illegalities/irregularities were found. Accordingly, while issuing show cause notice to the local authorities about their dereliction in duties, they were directed to initiate proceedings for cancellation of licences and the fair price shop agreements. Accordingly, notices were issued by the licensing authority to several dealers of the fair price shops, including the petitioners on 29.9.2005, to which they replied on 3.10.2005. As the same was not found satisfactory, their licence and agreement of fair price shops were cancelled by the licensing authority, by order dated 12.12.2005. As the action was contemplated against several fair price shop dealers, there was some delay in initiating the proceedings for cancellation of licence. The petitioners' case is not similar to the case of *Mundrika Ram* (Supra). Petitioners have got alternative remedy of appeal/revision and the said authorities can enquire into the matter and decide the appeals/revisions on their own merits.

5. The question is whether licences of the petitioners were cancelled under Memo/order dated 17.7.2004; and whether the licence cancellation proceeding/order, and filing appeal/revision, all are empty formality? The answer is in the negative for the following reasons.

As admitted in the writ petitions, petitioners lifted quota of commodities up to 17.8.2005. Therefore, it cannot be accepted that under the said memo/order dated 17.8.2004, petitioners' licences were first cancelled and then proceedings for cancellation of licence were initiated.

Secondly petitioners themselves have annexed orders of appellate/revisional authority passed in the cases of other parties, whose fair price shops were also inspected during the inspections in question and it appears from these orders that on the basis of the merits of the individual cases, relief was granted to the parties by the appellate/revisional authorities.

6. The case of *Mundrika Ram* (Supra) is of no help to the petitioners. By letter dated 12.8.2005, his licence was suspended and the same was cancelled on the next day i.e. by letter dated 13.8.2005 saying that he failed to submit his show cause reply. This Court noticed that on the one hand, it was said by the department that show cause was not filed and on the other hand, it was said in the counter affidavit that show cause was not found satisfactory. The Court also

noted that when the shop was found closed, there was no occasion for the licensee to display the stock position outside the shop. Thus the order of suspension/cancellation of licence was set aside mainly on the ground that both were issued simultaneously one after another without application of mind. But, in the present case, a show cause notice in the matter of cancellation of licence was issued to the petitioner on 29.9.2005 and after receipt of the reply on 3.10.2005, the order of cancellation was passed on 12.12.2005.

7. The dealership licence granted under the Unification Order and the fair price shop agreements are two different things. In order to clear some confusion between the parties in this regard, it is necessary to reproduce paragraph 5 of the Division Bench judgment of Patna High Court in *Akhtar Ali v. State of Bihar* and Ors. 1989 PLJR 709:

Unfortunately neither the dealer nor the respondents seem to be clear of the legal position. A person in order to deal in food-stuffs must obtain a licence under the Unification Order but he has no right to be appointed under the public distribution system as fair price shop-keeper. Apart from being a licensee he has to act according to the terms and conditions of the agreement to continue as fair price shopkeeper. It is the discretion of the government either to appoint a person as fair price shop-keeper or not to do so. If the government appoints a person as a fair price shopkeeper, an agreement has to be executed therefore and as per the agreement the fair price shop-keeper has to act. If there is violation of the agreement or conditions thereof or the conduct of the fair price shop-keeper is not in consonance with the terms and conditions of the agreement or his acting and dealing do not inspire confidence, by adopting a fair procedure, the government may terminate the agreement and refuse to allot any food-stuffs to the dealer in future. But this procedure or action will not affect the licence of the petitioner to carry on trade and business in food-stuffs on his own since for cancellation of the licence issued under the order certain statutory procedures have to be followed. The Unification Order provides modality as well as grounds when such order for cancellation can be made. From a perusal of the instant show cause, it seems that the consumers were highly dissatisfied with the conduct of the petitioner which was spot verified in presence of the petitioner where some consumers were also examined. Therefore, the authorities fairly arrived at the conclusions that the petitioner is not fit to further act as a fair price shopkeeper.

8. In the present case, the licences as well as the agreements have been cancelled by the licensing authority. Petitioners will be at liberty to file appeals/revisions before the competent authorities. If such appeals/revisions are filed, it goes without saying that the competent authorities will enquire into the matter and will decide the appeals/ revisions on their own merits expeditiously and in accordance with law.

If petitioners' licence is restored, they will be at liberty to move the Government for restoration of their fair price shop agreements, which will be decided on their

own merits. It is made clear that I have not gone into the merits of the case.

9. With these observations and directions, these writ petitions are disposed off.