(1998) 10 PAT CK 0028

In the Patna High Court

Case No : C.W.J.C. No. 7696 (IA 10496) of 1998

Braj Kishore Singh and Others APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 20-10-1998

Acts Referred:
Constitution of India, 1950 — Article 298

Citation : (1998) 3 PLJR 903

Hon'ble Judges : N. Pandey, J

Bench : Single Bench

Advocate : Dhrub Narayan, Navneet Kumar, Umakant Shukla, S.P. Srivastava, Sidhendra Narain Singh, Nalin Kumar, N.K. Agarwal, A.K. Jain and Ajay Kumar Thakur, for the Appellant; C.K.P. Bhagat, for the Respondent

Judgement

N. Pandey, J.—Points involved in all these cases, being common, they have been heard together and are being dispossed of by this order.

2. The Petitioners are Fair price Shop Dealers, having licences under the Bihar Trade Articles (Licences Unification) Order, 1984 (hereinafter to be referred to as the ''Licensing Order''). They are aggrieved by the impugned action of the District Magistrate and the Subdivisional Officers of the concerned districts, whereby steps have been taken to cancel their agreements and licenses in purported compliance of the letter of the Secretary, Food, Supply and Commerce, bearing memo No. 1355 dated 26th March, 1998.

3. There is no allegation that at any point of time, the Petitioners have breached the terms and conditions of the licences or the orders of the State Government issued from time to time in this regard. Reasons for the impugned action, as would appear from the impugned order, and the averments of the Respondents in the counter affidavit filed in CWJC No. 7696 of 1998 are that in view of the general census of 1991 each fair price shop in the rural areas should be established on a population of 1900 whereas in urban areas against the population of 1350. There fore, having regard to such a policy, steps are being

taken to cancel the agreements and, consequent thereto, licences of such shops, where units were not allotted in conformity to such a policy. An attempt has also been made to show that besides the aforesaid irregularity, it was further discovered that Government policy of reservation to allot certain percentage of shops to the members of the scheduled caste and tribe and other weaker sections were also not fully complied.

4. It was contended on behalf of the Petitioners that from a bare reference to the facts brought on the record, there appeare no allegation whatsoever against the Petitioners that they had violated any of the terms and conditions of this licence of Government order issued in this regard. Nor there is any material to show that Petitioners were given any opportunity to file show case against the proposed action. It has already been settled by various decisions of this Court as well as the apex court that neither licences granted under the licensing order nor any agreement thereof can be cancelled without extending a reasonable opportunity to a license and that too, if there is any violation of the condition of the licence or Government''s order. Reference in this regard was also made to Clause 11 of the Unification order to show that a licence cannot be suspended for a period more than three months in a case where an inquiry under that clause is undertaken for contravention of the terms and conditions of the licence. In the event of contravention of the terms and conditions of the licence is proved, the licence can be suspended or cancelled only in relation to the articles to which the contravention relates.

5. On behalf of the Respondents an attempt was made to show that only the agreements of the Petitioners were cancelled and not the licences. Therefore, it was not necessary to give individual notices to the licensees prior to such action. That apart, from a bare reference to Clause 3 of the agreement, it would be established that the licensing authority will have right to terminate such agreement at any time without assigning any reason or notice to the dealers.

6. Learned Counsel for the Petitioners submitted that it has already been held by this Court that cancellation of agreement amounts to stoppage of the business of the licensees. Therefore, in such matters the action of State authorities should not be arbitrary and at their sweet will. Such action must be in conformity with the standard and norms which is not arbitrary, irrational or irrelevant. Because there is a difference between agreement of two individuals and that with the Government and individual. Such agreement always comes within the purview of Article 298 of the Constitution and the rule of fairness cannot be cut and dried. In support of the contention, reference was made to the decisions of this Court in the case of Sachindra Kumar Vs. The State of Bihar and Others and Niranjan Mahto Vs. State of Bihar and Others, where it was held that administrative powers must be exercised fairly.

7. True it is, the State Government may or may not enter into a contract with any one but if it does so. it must do fairly and without discrimination.'' If the Respondents as per the statutory provisions of the Essential Commodities Act or

Unification Order cannot cancel the licence or stop a licensee to run the business unless and until procedures prescribed are followed, they cannot be permitted to cancel the agreements and stop supply of commodities without adhering to such procedures.

8. No doubt, the State Government has the full authority to prescribe a scheme for allotment of quota and fix the number of units to be attached with a particular shop. Therefore, nothing wrong can be alleged if the Government decided to establish fair price shops on the population of 1900 or 1350, as the case may be. But various allegations have been made by the Petitioners that steps for cancellation of agreements were taken in a quite arbitrary and pick and choose basis. Many fair price shops are running at the strength or 400-500 population or even at the strength of 5000 population or more. But steps have not been taken to cancel the licences or agreements of such shops. Rather under the garb of such policy, agreements of old shops dealers have been cancelled without taking steps against those who got licences and agreements at a much later stage in violation of policy of the State. Therefore in all fairness, it was proper for the Respondents to inform the concerned licensees about the change of policy and the proposed action. Because, every action of the State authorities in exercise of the administrative or executive powers must be informed and backed by reasons. In support of such a view, reference can usefully be made to a decision of the apex court in the case of Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, .

9. In any view of the matter, the relationship between the State and the fairprice shop dealers either it be contractual or statutory is not disputed. This is also not in dispute that many of them are running fair price shops since last several years. It has also been noticed that no contravention of any of the provisions of the licence was alleged against these Petitioners. Therefore, procedure adopted by the State authorities in such matters should always be reasonable, fair and just. That apart, I have also been informed by the learned Advocate appearing for the parties that all these licences and agreements with the Petitioners are only available till December of this year. Therefore, in all fairness, it was proper for the Respondents to take such steps at the time of grant of fresh licence and agreements or renewal as the case may be, but after giving notices about the proposed action to such licence holders whose allocation of units are not in conformity with the Government''s policy.

10. I. therefore, taking into consideration all the facts noticed above, quash the impugned orders of the licensing authority whereby agreements and/or licences of the Petitioners have been cancelled or suspended but with liberty to take fresh decisions in accordance with law.

11. With the aforesaid, all the writ applications along with I. As. are disposed of.

