
(2009) 02 JH CK 0043
In the Jharkhand High Court

Buddi Lal Soren

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 04-02-2009

Acts Referred:

Citation : AIR 2009 Jhar 73

Hon'ble Judges : R.R. Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.R. Prasad, J.—This writ application has been filed for quashing the order as contained in memo No. 245 dated 7.3.2007 (Annexure 5) whereby Sub-divisional Officer, Dumka, respondent No. 3 cancelled the petitioner's licence, bearing No. 35/2000 issued to the petitioner in terms of unification order under the scheme of public distribution system.

2. Learned Counsel appearing for the petitioner submits that Block Supply Officer, Dumka allegedly made an inspection of the shop on 12.11.2006 and found the shop closed; display board and lists of beneficiaries were not affixed, complaints were received that food grains are being not distributed regularly, rather it is being sold illegally in the black market. Thereupon, a notice was issued to the petitioner to submit his explanation with respect to irregularities found during the inspection. The petitioner did submit his show cause wherein it was denied that the petitioner had ever indulged himself in any malpractice relating to distribution of the commodities amongst the beneficiaries. Thereafter the enquiry committee constituted by Deputy Commissioner, Dumka made an inspection of the shop and there complaints regarding non-distribution of food grains and K. Oil were allegedly received. Thereafter the licence of the petitioner was suspended and the petitioner was asked to submit his explanation. Pursuant to that, explanation was submitted stating therein that food grains and K. Oil were being regularly distributed to the card holders and none of the cardholders has ever made complaint whatsoever. But Sub-divisional Officer, Dumka,

respondent No. 3 without enquiring into the matter, without verifying the documents and without taking into consideration the statements made in the show cause, cancelled the petitioner's licence under order No. 245 dated 7.3.2007 (Annexure 5) which order is quite illegal as charges on the basis of which licence has been cancelled were quite vague as the petitioner was never intimated about the name of the cardholders who had made complaint regarding non-distribution of the commodities but licensing authority while canceling the licence has mentioned about the name of the cardholders who had allegedly made complaint about the non-distribution and therefore, under this situation, enquiry can never be said to have been made fairly nor it can be said that fair opportunity was afforded to the petitioner and therefore, this writ application has been filed, though there is a provision of appeal but as the matter related to the enforcement of the fundamental rights of the livelihood and no fair opportunity was given to the petitioner to defend his case, therefore, there would be no bar in entertaining this writ application in view of the ratio laid down in a case of Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others,

3. It is accepted principle that rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. But there is some limitation to it and that limitation has been spelt out in the case referred to above wherein it has been held that normally the High Court should exercise its writ jurisdiction in the contingencies as enumerated hereunder:

(i) where the writ petition seeks enforcement of any of the fundamental rights;

(II) where there is failure or principles of natural justice or;

(III) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

4. In the case, referred to above, the High Court had refused to exercise its jurisdiction as the remedy to recourse to arbitration was available to the appellant. But the Supreme Court did hold that the High Court should not have relegated the appellant to go for arbitration as the appellant's dealership licence which was the bread and butter was terminated on the ground which was irrelevant and even non-existent but here in the instant case by which the petitioner's licence was cancelled cannot be said to be irrelevant or non-existent, though the ground on which licence has been terminated may not, according to learned Counsel appearing for the appellant, be sufficient to cancel the licence. Under this situation, I am not inclined to entertain this writ application in view of the forum of appeal being available to the petitioner. Accordingly, this writ application is rejected. However, the petitioner would be at liberty to avail the forum of appeal by filing appeal before the appropriate court. If such appeal is filed and if the matter relating to application being barred by limitation is raised, the appellate court while dealing with the matter of condonation of delay must take into consideration the period consumed in prosecuting this case in good faith for its exclusion and thereby the appeal be decided within three months

from its filing.