
(2015) 06 JH CK 0027

In the Jharkhand High Court

Case No : Writ Petition (C) No. 6298 of 2009

Chandi Charan Sarkar

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 16-06-2015

Acts Referred:

Citation : (2016) 1 AJR 406

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : D.K. Prasad, for the Appellant; Sumir Prasad, S.C. I, Advocates for the Respondent

Final Decision : Allowed

Judgement

S. Chandrashekhar, J.

1. Aggrieved by order dated 19.08.2009 in R.M.A. No. 57 of 2008-09, the present writ petition has been filed.

2. The petitioner was granted licence vide Licence No. 59 of 1991 for running a PDS shop. On 06.06.2008, an inspection was carried when the PDS shop of the petitioner was found closed. Some of the cardholders who were allegedly present there gave statements that they were either not given foodgrains or they were given only kerosene oil. It was found that on the display board outside the PDS shop of the petitioner, details were given which did not correspond to the statements given by the witnesses. Accordingly, a show-cause notice dated 28.06.2008 was issued to the petitioner to which the petitioner responded by filling reply dated 16.07.2008, denying the allegations made by the witnesses. The petitioner asserted that on 06.06.2008, he had gone to lift the foodgrains from godown of the Food Corporation of India (FCI) at Raghunathpur and on the same day by 3 p.m. he returned back. After considering the reply of the petitioner, vide order dated 22.07.2008, the licence of the petitioner was cancelled and the appeal preferred by the petitioner also stood dismissed vide

order dated 19.08.2009.

3. Mr. D.K. Prasad, the learned counsel for the petitioner submits that only on the allegation levelled by few persons who were allegedly present at the time of inspection on 06.06.2008, the licence of the petitioner was first suspended vide order dated 28.06.2008 and after the petitioner filed his reply to the show-cause notice, the licence was cancelled vide order dated 22.07.2008. It is submitted that the procedure adopted by the authority was erroneous. The defence taken by the petitioner was not considered by the Sub-Divisional Officer and the Appellate authority has also ignored the error committed by the Sub-Divisional Officer.

4. As against the above, Mr. Sumir Prasad, the learned S.C. I appearing for the respondent-State of Jharkhand raises a preliminary objection that there is a provision of revision for challenging the order passed by the Appellate Authority which the petitioner has not availed of and therefore, the writ petition is liable to be dismissed on this ground alone. It is further submitted that on the basis of the statements given by the cardholders, show-cause notice was issued to the petitioner and after considering the reply of the petitioner, the licence of the petitioner has been cancelled and thus, the procedure adopted by the Sub-Divisional Officer is in consonance with the principles of natural justice. It is further submitted that two authorities have held against the petitioner and therefore, no interference is required in the present matter.

5. From the show-cause notice dated 28.06.2008, it appears that on 06.06.2008, the wife of Red Cardholder namely, Sri Parmeshwar Soren and another Red Cardholders namely, Sri Bishnu Bauri and Sri Pradhan Soren have given statements that they were not given foodgrains regularly. The wife of Sri Parmeshwar Soren stated that she was never given foodgrains and only kerosene oil was given to her. The petitioner has specifically denied the allegations and in paragraph No. 2 of the show-cause reply dated 16.07.2008 he had categorically asserted that the registers maintained by him may be examined to verify the genuineness of the stand taken by him. From order dated 22.07.2008 or order dated 19.08.2009, it does not appear that the Sub-Divisional Officer or the Deputy Commissioner directed the petitioner to produce the stock register, purchase and sale register etc. It is apparent from the impugned order dated 19.08.2009 by which order dated 22.07.2008 cancelling the licence of the petitioner has been affirmed, that the appellate authority proceeded on the premise that the statements given by the witnesses were true. The appellate authority has recorded a finding that the plea taken by the petitioner that the shop was closed on 06.06.2008 because he had gone to lift the foodgrains, was untrue however, no reason has been disclosed by the appellate authority for recording such a finding. Apparently, the procedure adopted by the authorities was erroneous. When the petitioner categorically asserted that he has not committed any irregularity which can be verified from the registers maintained by him, the least which was required from the authorities was to direct the

petitioner to produce the registers. I find that the Sub-Divisional Officer as well as the Deputy Commissioner committed error in law in cancelling the licence of the petitioner without directing the petitioner to produce documentary evidence and verifying the same.

6. Accordingly, order dated 19.08.2009 is set-aside. The matter is remitted back to the Deputy Commissioner to consider the matter afresh. The counsel appearing for the respondent-State of Jharkhand is not able to disclose whether the licence for the PDS shop has been awarded to another person or not. If the licence for the said PDS shop has been awarded to another person, the Deputy Commissioner shall afford opportunity of hearing to the said person also.

7. The writ petition stands allowed in the above terms.