
(2015) 04 RAJ CK 0108

In the Rajasthan High Court

Case No : Civil Writ Petition No. 7722/2014 and Civil Misc. Stay Application No. 6982 of 2014

Devki Nandan Sain

APPELLANT

Vs

Additional Food Commissioner and Others

RESPONDENT

Date of Decision : 28-04-2015

Acts Referred:

Citation : (2015) 04 RAJ CK 0108

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Keshav Agarwal, for the Appellant

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.

1. This writ petition has been filed by the petitioner Devki Nandan Sain contending that he was an authorized fair price shopkeeper and has been distributing the essential commodities to the consumers with full satisfactions and without any complaint. He was authorized for Village Mathna, Gram Panchayat Mathna. It is contended that in Gram Panchayat Mathna, two fair price shops were running. One is of the petitioner for half portion of Gram Panchayat Mathna and second is of Respondent No. 4 for another half portion of Gram Panchayat Mathna. Both the dealers were distributing their commodities separately in their respective areas and consumers and distributing area were different between them. A show cause notice dated 19.07.2010 was issued to the petitioner by Respondent No. 3 alleging therein certain irregularities. The petitioner filed a detailed reply to show cause notice on 12.08.2010 denying the facts of the notice. Thereafter, the Respondent No. 3 initiated departmental proceedings against the petitioner and instituted Case No. 16/2010 and authorization of the petitioner was suspended but later on the same was restored vide order dated 14.10.2010.

2. Respondent No. 3 again got an inspection of the shop of the petitioner and another dealer Jai Prakash. Inquiry Officer conducted the inquiry on 12.10.2010 and prepared site inquiry report in presence of witnesses according to which Respondent No. 4 was held liable for irregularities. The said report was submitted to ADM, Baran which was forwarded to Respondent No. 3 vide letter dated 01.11.2010.

3. Respondent No. 3 again issued show cause notice dated 03/08.11.2010 to the petitioner and Respondent No. 4 alleging therein certain irregularities and the petitioner was asked to submit explanation on 09.11.2010. However, Respondent No. 3, without serving the show cause notice to the petitioner ex-parte decided the case vide order dated 15.11.2010 cancelling authorization of both the dealers by a common order dated 15.11.2010. The petitioner and Respondent No. 4 filed an appeal before Respondent No. 2 which came to be dismissed vide order dated 22.02.2011. Thereafter, the petitioner and Respondent No. 4 preferred a joint revision petition before Respondent No. 1 against the orders passed by Respondent No. 2 and 3 which too was dismissed vide order dated 18.04.2013. Being aggrieved by orders dated 15.11.2010, 22.02.2011 and 18.04.2013, the petitioner has filed present writ petition.

4. Learned counsel for the petitioner has submitted that Respondent No. 3 after issuing notice on 03/08.11.2010 did not provide proper opportunity of hearing and even without serving the notice, ex-parte cancelled the authorization on 15.11.2010 within a period of seven days. Respondent No. 3 has taken all the proceedings jointly against the petitioner and Respondent No. 4. He got conducted a joint inquiry against both the dealers, issued joint show cause notice and cancelled the authorization by a common order dated 15.11.2010 which is totally against the provisions of law because work of both the dealers were different and for different areas. Both the dealers were issued different authorizations for different areas. Respondent No. 3 even has not specified as to which allegation relates to the petitioner and which allegation relates to Respondent No. 4. Such vague, unspecific and illegal notice could not be issued and cancellation on the basis of such notice could not be made. The inquiry report deals about Respondent No. 4 and there is no allegation against the petitioner in inquiry report. No proper opportunity of hearing was granted to the petitioner. The petitioner was not afforded opportunity to produce his evidence, to cross examine the witnesses, statements of whom were recorded by Inquiry Officer. No inquiry report was made available to the petitioner. The authority has to record categorical speaking order in respect of specific charge, but Respondent No. 3 has not assigned any reason while passing order dated 15.11.2010. Perusal of the order dated 15.11.2010 passed by Respondent No. 3 reveals that the said order was passed in absence of the petitioner and Respondent No. 4, despite service of notice upon them. In the said order it has been stated that in the months of June and July, 2010, distribution of Kerosene oil was done, but only 3.5 and 3.75 litre kerosene oil was distributed to the consumers instead of 4 litre. Certain other irregularities were also found. Therefore, after registering a

case, again notices were issued to the petitioner and Respondents No. 4 and they filed their separate reply to the same. It is also stated in that order that it was informed vide letter dated 15.09.2010 by GSS, Mathna that 49.13 quintal wheat and 2385 litre kerosene oil was received from fair price shop of the petitioner and 16 quintal rice, 43.37 wheat and 2 quintal sugar were received from fair shop of Respondent No. 4 whereas the inspector concerned at the time sealing of the shop has mentioned that both the fair price shops were being run at Mathna, therefore, the aforesaid fact is doubtful. It is further stated in the order dated all the charges were found proved and in the stock registers of month of July, 2010, stock of 8 quintal wheat and 99 litre kerosene oil were found less which comes in the category of embezzlement. Thereafter, again show cause notices were issued to the petitioner and Respondent No. 4 which were served upon them but neither any reply was filed by them, nor did the petitioner or Respondent No. 4 appear. Thereafter, 15.11.2010 was fixed as next and during the said period also, no reply was submitted by the petitioner, therefore, ex-parte proceedings were initiated on 15.11.2010 and impugned order was passed.

5. From the aforesaid proceedings, it is crystal clear that the argument of learned counsel for the petitioner that the petitioner was not provide adequate opportunity of hearing has no force, as he was granted sufficient opportunities by the respondents to defend his case but the petitioner failed to do so. There are serious charges against the petitioner. The appellate authority in its order has also observed that the petitioner and Respondent No. 4 have failed to comply with the conditions mentioned in the authorization letter and has rightly rejected appeal of the petitioner and Respondent No. 4. Revisional Authority has upheld the orders passed by Respondent No. 3 and Appellate Authority. There is no infirmity or illegality in the impugned orders which call for no interference by this Court.

6. In view of above, there is no merit in this writ petition and the same is accordingly dismissed.

7. Stay application also stands dismissed.