

(2011) 07 JH CK 0150

In the Jharkhand High Court

Case No : Writ Petition (C) No. 3282 of 2011.

Firdausi Sway Sahayata Samuh (SHG)

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 13-07-2011

Acts Referred:

Citation : (2011) 4 JCR 146

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.N. Patel, J.—By the Court.--The present petition has been preferred against the order passed by the Sub Divisional Officer, Pakur dated 6th June, 2011 (Annexure-3), whereby, the license given to the petitioner for running the fair price shop was cancelled.

2. Learned counsel appearing for the petitioner mainly submitted that no adequate notice is given to the petitioner before passing the impugned order. It is an admitted fact, even as per paragraph 6 of the counter-affidavit that only two days" time was given to give reply of the show cause notice, issued by the respondents and in fact, the petitioner has given a reply, it has not been considered, at all, by the respondents. In fact, time given by the respondents is highly insufficient, which tantamounts to violation of principle of natural justice. Moreover, several documents have been relied upon while passing the impugned order by the Sub Divisional Officer, Pakur, but, not a single document has been given to the petitioner and, therefore also, there is violation of principle of natural justice. Some report has been called for by the Sub Divisional Officer, Pakur and the same has never been given to the petitioner and it has been relied upon while passing the impugned order. Similarly, some statements of the alleged ration card-holders have been recorded, but, none of the statements have been supplied to the petitioner, therefore, the petitioner is entitled to defend its case and, therefore, the impugned order deserves to be quashed and

set aside and the matter may be remanded to the concerned appellate authority so as to give adequate opportunity to the petitioner to represent its case.

3. I have heard learned counsel for the respondents, who has submitted that notice was given to the petitioner, as stated in the counter-affidavit, before passing the impugned order. The reply was given after the time limit is over and, therefore, the same has not been considered by the respondents. It is fairly submitted by learned counsel for the respondents that the documents, relied upon by the Sub Divisional Officer, Pakur while passing the impugned order, have not been supplied to the petitioner. Nonetheless, the appeal is provided against the impugned order and, therefore, the petition may not be entertained by this Court, at this stage.

4. Having heard learned counsel for both the sides and looking to the facts and circumstances of the case, I hereby quash and set aside the order passed by the Sub Divisional Officer, Pakur dated 6th June, 2011 at Annexure-3 mainly for the following facts and reasons :

(i) The petitioner was given license in the year 2009 to run the fair price shop. Thereafter, the petitioner continued with fair price shop, in question, for several months. Not on a single occasion, any breach of any of the conditions of the license have been found out by the respondents. Thus, the petitioner was working in accordance with law.

(ii) It appears that suddenly a notice was given by pointing out several irregularities in running the fair price shop and only two days" time was given to give reply of the said show cause notice.

(iii) It also appears from the facts of the case that the reply of the show cause notice was given by the petitioner after the time limit, given by the respondents Le. after two days of the receipt of the copy of the notice. Looking to these facts, it appears that the concerned respondent authority, who has given notice, has lost sight of the fact that such a short time ought not to have been given to the petitioner. Looking to the nature of allegation labelled against the petitioner, at least ten days" time ought to have been given to the petitioner so that the petitioner can adequately represent its case before the concerned respondent authorities. Too short time to give a reply of the show cause notice tantamounts to violation of principle of natural justice.

(iv) It further appears from the facts of the case that while passing the impugned order, the Sub Divisional Officer, Pakur has relied upon some report privately called for by him. Neither the copy nor the gist of the report has been supplied to the petitioner. Whenever, the respondents are relying upon any document while passing the impugned order, a copy whereof or summary thereof ought to have been supplied to the petitioner. Likewise, several statements of the ration card-holders have been relied upon. Nobody knows who says what about the petitioner and nobody knows whether they are really ration card-holders or not. If the Sub Divisional Officer, Pakur is relying upon this statement for cancelling

the fair price shop license then these statements or summary thereof ought to have been supplied to the petitioner. In the facts of the present case, no such statement or summary thereof has been supplied to the petitioner.

5. In view of the aforesaid facts and reasons, there is gross violation of principle of natural justice while passing the impugned order. I therefore, quash and set aside the order passed by the Sub Divisional Officer, Pakur dated 6th June. 2011 at Annexure-3 to the memo of the present petition. Liberty is reserved with the respondents to take appropriate steps against the petitioner, if the respondents want to take such action, at least after following the principle of natural justice.

6. The writ petition is allowed and disposed of.