
(1982) 11 PAT CK 0009

In the Patna High Court

Case No : C.W.J.C. No's. 1028 of 1977 and 1011 of 1977

Govind Saran and Sons

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 23-11-1982

Acts Referred:

Constitution of India, 1950 — Article 19, 226
Essential Commodities Act, 1955 — Section 3, 7
Industries (Development and Regulation) Act, 1951 — Section 18AA

Citation : (1983) 31 BLJR 153 : (1983) PLJR 26

Hon'ble Judges : Satya Brata Sanyal, J; Prem Shanker Sahay, J

Bench : Division Bench

Judgement

Satya Brata Sanyal, J.—These two writ petitions C.W.J.C. No. 1028 of 1977 and C.W.J.C. No. 1014 of 1977 have been taken up together as the points involved in these writ petitions are common. This judgment, therefore, will govern both the cases.

2. In C.W.J.C. No. 1028 of 1977 the petitioner assails Annexure and 2 and in C.W.J.C. No, 1014 of 1977 the prayer is for quashing Annexure 1 and 8. These Annexure relate to an order of suspension of the petitioner's registration certificate bearing No. 40/76-77 (in C.W.J.C. No. 1028 of 1977) and registration certificate No. 4-F/72-73 (in C.W.J.C. No. 1014 of 1977) issued under Clause 7 of the Fertilizer Control Order, 1957 (hereinafter to be referred to as "the Order") a central order issued u/s 3 of the Essential Commodities Act, 1955 (hereinafter to be referred to as "the Act").

3. The only relevant fact common to both the cases, is that there has been an inspection of the shops pertaining to the said two registration certificates, by the inspecting authorities and certain irregularities were detected in the maintenance of the Accounts. Thereafter, criminal cases u/s 7 of the Act have been instituted against the dealers, which are pending disposal before the Criminal Courts. In view of the pendency of the said criminal cases, the authorities suspended the

registration certificates and further directed that the two firms/dealers be not allotted any fertilizer by the wholesale dealers.

4. Mr. Rameshwar Prasad No. II, learned Counsel appearing for the petitioners in both the cases, drew my attention to Clauses 6, 7 and 17 of the Order, which read as follows:

6. Applications for registration: Every person desiring to obtain a certificate of registration for selling fertilizer under this Order shall make an application in duplicate to the Registering Authority in Form "A" together with the fee for the registration and a certificate from the manufacturer whom he represent or intends to represent or from the State Government or a Commodity Board indicating the source from which the fertilizer will be obtained.

Provided that a certificate of registration shall not be granted to a person who--

(a) has been convicted for any offence under the Essential Commodities Act, 1955 (10 of 1955) or any order made there under within three years preceding the date of application;

(b) fails to enclose with the application a certificate from the manufacturer, the State Government, or a Commodity Board "as required under Clause 6.

... ..

7. Grant and refusal of registration: The Registering authority shall grant a certificate of registration in Form "B" within thirty days of the receipt of the application to any person who applies for it under Clause 6.

Provided that where a certificate of registration granted under this order is suspended or cancelled under Clause 17, the Registering authority shall not grant a new certificate of registration during the period of such suspension or for a period of one year from the date of such cancellation.

... .. 17. Power to cancel registration certificate.-- A registering authority may, after giving the holder of a certificate of registration, an opportunity of being heard, cancel or suspend the certificate of registration on any of the following grounds, namely:

(a) that the certificate of registration had been obtained by misrepresentation to a material particular; and

(b) that any of the provision of the Order or any condition of the certificate of registration has been contravened.

Relying on the said provisions, he submits:

(a) Under the aforesaid clause registration certificate could be cancelled or suspended for reasons enumerated in Clause 17. Pendency of a criminal case is not one of the conditions attracting cancellation or suspension of the certificate;

(b) The law envisages cancellation or suspension of the registration certificate by way of punishment only and that too, after following the principles of natural justice. In the instant case said procedures have not been followed, therefore, the order of suspension is without jurisdiction. It is also bad because the impugned order is by way of interim suspension of registration certificate pending the criminal cases;

(c) Powers of interim suspension is either creature of the statute governing the contract or express terms in the contract itself.

Neither the order nor the terms and conditions of the registration certificate, any where confer power on the authorities to pass an order of interim suspension of the registration certificate.

Counsel appearing for the State contended that since a criminal proceeding for contravention of the order is pending, it is just and proper as also urgent under the exigencies of the situation, that such a person should not be allowed to carry on business till the disposal of the said criminal case and, therefore, the order suspending the registration certificate is legal and valid. He further contends that Clause 18 (c) of the Order envisages an appeal from an order canceling or suspending any certificate of registration and the Petitioners have not exhausted the said remedy, as such the writ petitions should not be entertained.

4. The modern States have found the desirability to control or regulate specified activities to some form of Government Control; Where the law making authority has considered the imposition of such control desirable, it has, amongst other measures, imposed need to obtain license. The form of the license and the conditions on which the license may or may not be issued in the particular instance, renewal, cancellation and suspension of the license are either settled by a statute or as laid down in some form of subordinate legislation. The subordinate legislation usually regulate the manner in which the principal activities may be carried on under the terms of the license. It may be noteworthy to mention here:

that non-renewal of an existing license is usually a more serious matter than refusal to grant a license in the first place. Unless the licensee has already been given to understand when he was granted the license that renewal is not to be expected, non-renewal may seriously upset his plans, cause him economic loss and perhaps cast a slur on his reputation. It may, therefore, be right to imply a duty to hear, before a decision not to renew when there is a legitimate expectation of renewal even though no such duty is implied in the making of the original decisions to grant or refuse the license.

This principle is recognized by "Some British statutes and judicial dicta, and number of judicial decisions in other Common Wealth Jurisdictions" (Quotations from Smith's Judicial Review of Administrative Action, 4th Edition, Pages 223 and 224).

5. Suspension of license whether by way of interim measure or by way of punishment stands on the same footing, nay on a better footing than refusal to renew a license, as it causes unexpected and sudden interference with the business during the currency of license, thus putting the licensee to serious jeopardy. Adherence to the principles of natural justice is a functional obligation more particularly "where people are affected to acts of authority". "The soul of the rule of natural justice is fair play" (Vide *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, .

6. A look to the scheme of the order discloses that ordinarily if a person makes an application in accordance with the provisions of Clause 6, there will be a grant of certificate of registration under Clause 7 of the order:

(a) If the applicant had not suffered a prior suspension or cancellation of his registration certificate etc;

(b) He has not been convicted of any offence under the Act or any order made there under within three years, preceding the date of application;

(c) If the application is not in compliance with the requirements of Clause 6 of the Order. The scheme thus envisages that mere pendency of a criminal case for breach of the Act and/or the Order is of no consequence, unless the person has suffered a conviction i.e. contravention alleged is finally adjudicated.

7. A citizen has a right to carry on trade or business guaranteed under Article 19(1)(g) of the Constitution of India. The power to revoke or to suspend a license is a drastic power. It results in severe abridgment of the right to carry on business and, therefore, the order has prescribed certain conditions to prevent the abuse to power and to ensure just exercise of power. Any order of suspension or revocation in breach of any one of the conditions laid down under Clause 17 of the order is undoubtedly void, (See *Narayanan Sankaran Mooss Vs. The State of Kerala and Another*, : *Andhra Industrial Works Vs. Chief Controller of Imports and Others*, . Trade in intoxicants, however, stands on a different footing as there is no fundamental right to do trade and business in intoxicants (Vide *Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others*, .

8. The question, however, in the instant case is whether in absence of any provision in the statute and in the subordinate legislation and/or in the terms and conditions of the license, the authorities had any jurisdiction to pass an order of interim suspension till the disposal of the criminal case pending against the petitioner and that too without giving the dealer an opportunity to be heard in the matter. To my mind such a power of interim suspension could only be conferred by the statute or the subordinate legislation or a contract, i.e., the terms and conditions of the license. The said power must be conferred in express terms. In contract of employment this principle is well settled. (See *V.P. Gidroniya Vs. The State of Madhya Pradesh and Another*, ; *The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers" Union*, . There has been quite a number of unreported decisions of this Court which have taken the same

view with respect to law of license and the said decisions have laid down that in absence of any provision in the statutes and/or the order and/or in the terms and conditions of the license, the authorities had no jurisdiction at all to pass an interim order of suspension (See *Sita Ram Sah v. Sub-divisional Magistrate, Bihar* C.W.J.C. No. 27 of 1974 dated 9 January 1974; *Messrs Dewat Narain Singh v. State of Bihar* C.W.J.C. No. 1110 of 1975 disposed of on 21st April 1976 and *Messrs Babulal Sah Radhelal Sah v. The State of Bihar* C.W.J. No. 771 of 1973 disposed of on 3rd August 1976. This question again arose in the case of *Kashiram Dalmia Vs. The State of Bihar and Others*, but their Lordships refrained to go into the said question and preferred to quash the order of interim suspension, as the said order was passed without affording an opportunity of being heard in the matter by taking the view "undoubtedly the order suspending license be it interim or final affect the license adversely and therefore he should be afforded opportunity of being heard in the matter."

9. From the provisions of Clause 7 and Clause 17 of the Order it is manifest that a certificate of registration can only be refused when a person has been convicted of any offence under the Act. A person's registration certificate can be cancelled and suspended after following the principles of natural justice. A mere allegation of contravention does not call for any action under the Act, order or under the terms and conditions of the registration certificate. Whether the petitioner has contravened the provisions of the order in the instant case is sub-judice before the criminal Court and as such in the domain of mere allegation yet the petitioner is made to suffer by stoppage of his right to carry on trade and business. The order neither expressly nor impliedly conferred power to suspend the certificate of registration by way of interim measure. I am convinced in my mind that such a power is a creature of the statute and/or the terms of contract. Since the power is absent, the authorities acted wholly without jurisdiction in suspending the licence through the impugned annexure. I am also in full agreement with the principle that since a suspension by way of punishment or by way of interim measure visit the person with the same consequences the person so affected must be given an opportunity of being heard before the proposed action is taken. A question may arise as to what would be the form of hearing in the case of suspension by way of punishment and suspension by way of an interim measure (assuming for a moment, such an action is envisaged by the statute). It is contended if the same procedure is to be followed in both the circumstances, the interim suspension measure would be meaningless. The answer to this question is not too far to seek. The decision of the Supreme Court in the case of *Swadeshi Cotton Mills Vs. Union of India (UOI)*, , provides the answer. The Supreme Court while considering the provision of Section 18-AA, Industries (Development and Regulation) Act, which conferred power on the Central Government to immediately take over an industrial undertaking, pending investigation of its detrimental acts observed:

Cases of extreme urgency where action u/s 18-AA(1)(a) to prevent fall in production and consequent injury to public interest, brooks absolutely no delay

would be rare. In most cases, where the urgency is not so extreme, it is practicable to adjust and strike a balance between the competing claim of hurry and hearing.

The audi alteram partem rule as already pointed out, is a very flexible, malleable and adaptable concept of natural justice. To adjust and harmonies the need for speed and obligation to act fairly it can be modified and the measure of its application cut short in reasonable proportion to the exigencies of situation. Thus, in the ultimate analysis, the question (as to what extent and in what measure) the rule of fair hearing will apply at the pre-decisional stage will depend upon the degree of urgency, if any, evident from the facts and circumstances of the particular case.

In my opinion, the authorities at least must record a finding of prima facie case against the dealer for the proposed action, by following "Participatory justice". In the instant case admittedly no opportunity was provided to the petitioner before the impugned action was taken and therefore also the order is illegal and without jurisdiction.

10. The submissions of the learned Counsel appearing on behalf of the State that this Court should not interfere with the impugned order as the petitioner has not preferred an appeal, is wholly misconceived for more than one reasons. The writ having once been admitted it would be unfair to refused to exercise jurisdiction. The order per se is void, illegal and without jurisdiction. The order passed is further in breach of the principle of natural justice. No disputed questions of fact is at all involved for the decision. For each one of the reasons a case of interference is clearly made out. (Vide State of U.P. v. Md. Nooh AIR 1958 S.C. 86; A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, Coffee Board, Bangalore Vs. Joint Commercial Tax Officer, Madras and Another, .

The impugned order abridges the petitioner's fundamental right guaranteed under Article 19(1)(g) of the Constitution of India. It is too late in the day to contend that a firm is not a citizen and, therefore, not entitled to enforce fundamental rights. (Vide Messrs Andhra Industrial Works (supra). Once it is held that the cancellation and suspension of license is an abridgment of fundamental right, the case falls within the provisions of Article 226(1) of the Constitution of India and, therefore, no question of alternative remedy at all arise. Further 18 (c) of the Order does not provide appeal against an order of interim suspension. I, therefore, hold that the submissions raised on behalf of the State are devoid of any substance.

6. In fine, I quash Annexure 1 and 2 of C.W.J.C. No. 1028 of 1977 and Annexure 1 and 8 of C.W.J.C. No. 1014 of 1977 as being wholly illegal and without jurisdiction and allow the writ petitions. There will, however, be no order as to costs.

7. It would be open to the authorities to take such steps as they may deem fit in

accordance with law, bearing in mind the observations aforesaid.

Prem Shanker Sahay, J.

8. I agree.