

(1977) 07 PAT CK 0006

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No's. 2564 of 1976 and 678 of 1977

Kashiram Dalmia

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 11-07-1977

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1978 Patna 264

Hon'ble Judges : Shambhu Prasad Singh, J; Hari Lal Agrawal, J

Bench : Division Bench

Advocate : Balbhadra Prasad Singh, S.B. Sanyal and G.C. Bharuka, in both the cases, for the Appellant; Kameshwari Nandan Singh, Standing Counsel IV and Jawahardhari Singh, Junior Counsel to Standing Counsel IV for Respondents in C.W.J.C. No. 678 of 1977, Md. Khaleel, Government Pleader III and B.N.P. Gupta, Junior Counsel to Government Pleader III for Respondents in C.W.J.C. No. 2564 of 1976, for the Respondent

Final Decision : Allowed

Judgement

1. These two writ applications are by the same petitioner, which is a firm carrying on business at Forbes-ganj in the district of Purnea in cloths under licence bearing No. 111-F of 1965 issued under the Bihar Cotton Cloth and Yarn (Control) Order, 1956 (hereinafter referred to as "the Order"). By an order dated the 8th Sept., 1976, the Subdivisional Officer, Araria, suspended the said licence of the petitioner. That order has been made Annexure "1" to the application in Civil Writ Jurisdiction Case No. 2564 of 1976. Against the said order of suspension, the petitioner went in appeal to the District Magistrate, Purnea who by his order dated the 24th Nov., 1976, dismissed the appeal and upheld the order of suspension of the petitioner's licence. That order has been made Annexure "2" to the said writ application. In the said writ case there is a prayer for quashing the aforesaid two orders. By another order dated the 16th March 1977, the Subdivisional Officer, Araria, has cancelled the aforesaid licence of the petitioner. This order has been made Annexure "1" to the petition in Civil Writ

Jurisdiction Case No. 678 of 1977, and a prayer has been made in this case for quashing the order. The writ applications, in the circumstances have been heard together and are being disposed of by a common judgment.

2. So far Civil Writ Jurisdiction Case No. 678 of 1977 is concerned, it appears from the impugned order dated 16th March, 1977 (Annexure "1") that it was passed after 5.30 P. M. that day when the petitioner did not submit any explanation by that time. A supplementary affidavit has been filed on behalf of the petitioner stating that by a notification No. 3918 dated the 3rd March, 1977, 16th March, 1977 was declared a public holiday u/s 25 of the Negotiable Instruments Act, 1881 in the Araria Parliamentary Constituency. The order (Annexure T) was passed by the Sub-divisional Officer, Araria. A copy of the said gazette notification has also been placed before us and it confirms the aforesaid statement that 16th March, 1977 was declared a public holiday in the Araria Parliamentary Constituency which included Araria itself. The 16th March, 1977, being the public holiday, under the law the petitioner became entitled to file his explanation till the following day i. e., 17th March, 1977. A counter-affidavit has been filed on behalf of the respondents stating that the offices at Araria were opened on the 16th March, 1977, in spite of the gazette notification and the petitioner could have filed his explanation on that date. Once the 16th March, 1977 was declared a public holiday, whether the offices were kept open or not on that day is immaterial. The petitioner could ignore the fact that offices were open on that day and in law he became entitled, as observed earlier, to file his explanation on the following day.

3. In the circumstances, the order, cancelling the licence of the petitioner by respondent No. 3 of that case, is illegal and cannot be sustained and it has to be set aside. In this circumstance it is not necessary to go into other contentions raised on behalf of the petitioner in the case. The petitioner is entitled to get further opportunity for filing his explanation in the matter of cancellation of its licence and the authorities must consider that explanation, if filed within a reasonable time allowed for the purpose before passing order if any of cancellation.

4. So far Civil Writ Jurisdiction Case No. 2564 of 1976 is concerned, as stated earlier, in that case the licence of the petitioner has been suspended. It has been submitted on behalf of the respondents that the order of suspension was merely an interim order and not a final one by way of punishment. According to the learned counsel for the respondents, such an order could be passed once it was contemplated to consider the question whether the licence of the petitioner should be finally suspended or cancelled or not, for in such circumstances if there were prima facie materials before the authorities for suspension or cancellation of the licence of the petitioner, allowing him to continue his business would have done irreparable injury to the society. On the other hand, it has been submitted on behalf of the petitioner that under the order the authorities had no jurisdiction at all to pass an interim order of suspension. Reliance has been placed in support

of his contention on certain orders and decisions of this Court, namely, C. W. J. C. No. 27 of 1974 (Sitaram Sah v. Subdivisional Magistrate. Bihar Sharif dated 9th Jan., 1974), C. W. J.C. No. 1110 of 1975 (Messrs Dewat Narain Singh v. State of Bihar, D/- 21st April, 1976) and C. W. J. C. No. 771 of 1973 (Messrs Babulal Sah Radhelal Sah v. The State of Bihar, D/- 3rd Aug., 1976). However, on behalf of the respondents it has been submitted at some length that these decisions require reconsideration, for, to hold that no interim order of suspension can be passed at all may defeat the very purpose for which the power is conferred on the authorities under the order. We do not consider it necessary to go into that question in this case, for, the impugned order of suspension as contained in Annexure "1" to this writ application was passed without affording any opportunity to the petitioner of being heard in the matter. According to the learned counsel for the petitioner, even if it be assumed that the authorities have got jurisdiction to pass an interim order of suspension they must afford an opportunity to the person whose licence is going to be suspended of being heard in the matter and showing cause. Undoubtedly, the order suspending licence be it interim or final affect the licensee adversely and, therefore, he should be afforded opportunity of being heard in the matter and showing cause before such an order is passed. In this case, however, there was an appeal by the petitioner and as it appears from the appellate order, as contained in Annexure "2" to this writ application, the matter was heard by the appellate authority at length and explanations offered by the petitioner were considered. On behalf of the respondent it has been contended that in cases where adequate opportunity of being heard and explaining the position is afforded to the aggrieved person at the appellate stage, he cannot make grievance that he was not afforded opportunity of being heard at the original stage. Learned counsel for the petitioner in reply has placed reliance on a decision in *Leary v. National Union of Vehicle Builders* 1971 (1) Oh D 34) Megarry, J. relying on the decision in *Ridge v. Baldwin* 1964 App Cas 40) held that while a complete rehearing by original tribunal or by some other body competent to decide an issue might satisfy the requirement of natural justice, a plaintiff where there was right to appeal from a original decision, was entitled to natural justice both before the original tribunal and the appellate tribunal. As it appears from the facts of *Ridge v. Baldwin*, there the appellant before the House of Lords had gone in appeal against the original order to the Secretary of State and it was contended that thereby he was debarred from taking the point that the rule of natural justice was violated before the original tribunal. Dealing with that question Lord Reid observed as follows :

"Finally, there is the question whether by appealing to the Secretary of State the appellant is in some way prevented from now asserting the nullity of the respondents' decision. A person may be prevented from asserting the truth by estoppel, but it is not seriously argued that that doctrine applies here. Then it is said that the appellant elected to go to the Secretary of State and thereby waived his right to come to the court. That appears to me to be an attempt to set up what is in effect estoppel where the essential elements for estoppel are

not present. There are many cases where two remedies are open to an aggrieved person, but there is no general rule that by going to some other tribunal he puts it out of his power thereafter to assert his rights in court; and there was no express waiver because in appealing to the Secretary of State the appellant reserved his right to maintain that the decision was a nullity."

This view of Lord Reid was accepted by the majority of the Lord Justices. In the case, however, Megarry, J. has also noticed a decision of the Supreme Court of Canada 1968) 67 DLR 165. In that case a contrary view was taken and it was held that where full opportunity is given before the appellate tribunal, the defect of violation of rule of natural justice at the original stage may be ignored. The decision in Ridge v. Baldwin was referred to and distinguished on the ground that there were some differences between the facts of the two cases. The question is not free from difficulty. Be that as it may, on the facts and in the circumstances of the present case, we are of the view that the defect of non-observance of the rule of natural justice by not giving opportunity to the petitioner of being heard and showing cause before suspending his licence by the original authority was not cured by the hearing before the appellate authority. We are, therefore, of the view that the orders as contained in Annexures "1" and "2" to this writ application are also to be quashed.

5. In the result both the writ applications are allowed and the orders as contained in Annexure "1" to Civil Writ Jurisdiction Case No. 678 of 1977 and as contained in Annexures "1" and "2" to Civil Writ Jurisdiction Case No. 2564 of 1976 are set aside. It will be open to the authorities to pass such order of suspension or cancellation of the petitioner's licence as they may deem fit and proper after affording proper opportunity to the petitioner of being heard in the matter and explaining its case before them.

6. On receipt of the records the Sub-divisional Officer, Araria, will fix a date for hearing the petitioner in the matter, if he still considers that it is necessary to suspend or cancel the licence of the petitioner, for, one more fact has to be taken into account and that fact is that in the criminal case filed against the petitioner the police has submitted final report. In the circumstances of the case there will be no order as to costs.