
(2001) 11 PAT CK 0057
In the Patna High Court
Case No : C.W.J.C. No. 8538 of 1999

Krishna Sao

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 26-11-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 1 BLJR 155 : (2002) 1 PLJR 186

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Judgement

R.S. Garg, J.—Heard the learned Counsel for the parties.

2. By this petition under Article 226 of the Constitution of India, the petitioner seeks to challenge the correctness, validity and propriety of Memo No. 1519 dated 26th July, 1999 wherein, as alleged by the petitioner, the District Magistrate by non-speaking order has cancelled the retail trade-cum-public distribution shops licence of the petitioner.

3. In support of the petition it is contended by the learned Counsel for the petitioner that the licence was issued in his favour by Special Officer Incharge, Rationing, Patna, therefore, the said authority being licensing authority can only issue notice, make an inquiry and pass final order in relation to the cancellation or termination of the licence. In support of the submission, the learned Counsel for the petitioner has relied upon the certain judgments of this Court.

4. Learned Counsel for the State, on the other hand, submits that on receipt of the certain complaints an inquiry was directed to be made under the authority of the District Magistrate, the inquiry was made and there after, a proposal was made by the Special Officer, Incharge, Rationing, Patna to the District Magistrate. After receiving the said report, the District Magistrate so also the Special Officer, Incharge, found that the licence granted in favour of the petitioner would validly be cancelled, placing strong reliance upon the proceedings recorded in the order-

sheet. Learned Counsel for the State submitted before the Court, that final order was passed by the Special Officer, Incharge, and as the order directing cancellation of the licence, as contained in Annexure-1, has been countersigned by the said officer, there is no scope to hold that the order was passed by the District Magistrate. He further submits that as in accordance with Clause 28 of Bihar Trade Articles (Unification of licences) Order, 1984 there is an alternative and efficacious remedy by way of filing an appeal is available to the petitioner, this Court should not interfere.

5. Opposing the argument raised by the learned Counsel for the State, learned Counsel for the petitioner submits that if the authority had no jurisdiction at all to pass an order then, the petitioner is not required to file an appeal and can impugn the order in there proceedings. He further submits that from a bare perusal of the proceedings read with Annexure-3, it would clearly appear that the licensing authority was, in fact, not acting as a licensing authority but was acting as subordinate to the District Magistrate and hence, has simply submitted a report before the said District Magistrate. He submits that the availability of the alternative remedy is not absolute to be against the High Court for exercising its power under Article 226 of the Constitution of India.

6. I have heard the parties at length and have persue a the record.

7. There is no dispute before me that the Special Officer, Incharge, Rationing, Patna, is a different authority than the District Magistrate patna. It is also not in dispute before me that only licenship authority is competent to cancel the licence. Even otherwise in the matter of Ramautar Sinha v. State of Bihar and Anr. L.D.A. No. 422/99 decided on 9-3-2000, a Division Bench of this Court has already taken the view that it is only licensing authority which is empowered to cancel the licence and non-else can cancel the same. Though number of judgments have been cited at the Bar but I do not wish to burden my judgment by referring to the other judgments which have been delivered by the Single Judge. From a bare perusal of the proceedings annexed as Annexure-4, it would clearly appear that the District Magistrate required the Special Officer to make some inquiry. The Special Officer Incharge, made a recommendation to the District Magistrate that the licence should be suspended. Thereafter, somebody had put his signature with the direction that the proposed order for cancelling the licence be provided, thereafter, the said Special Officer, Incharge proposed the order and submitted before the Collector for its signature.

From these proceedings it would clearly appear that the said licensing authority was acting under the direction and control of the District Magistrate and was not exercising its power as conferred upon him under 1984 order. The law on the question of conferral of rights is absolutely clear when it says that if the authority is empowered to pass an order then it has to pass an order without being influenced by the extraneous consideration or under the mandate or dictates issued by the superior authority. In the present case from the tenure and tenor of the proceedings recorded by the Special Officer, it would clearly appear that he

was not exercising his free will but was acting under the control and guidance of the District Magistrate.

8. From a perusal of Annexure-3, it would again appear that the order in its material substance has been signed by the District Magistrate and has been countersigned by the Special Officer. Even from the said order, it does not appear that said Special Officer had applied his free will or the discretion or the wisdom to the available facts before passing the final order.

9. If an order is to be passed by the authority concerned in accordance with the provision of the law then such an order must be passed by the said authority in the manner as provided under the law or not at all. If an order is passed by the superior authority contrary to the right of the subordinate authority after making infringement into the authority of the subordinate then the order of the superior authority cannot be held to be valid. When the law requires the licensing authority to issue show-cause notice, hear the parties and pass a final order in the matter of licence then any other person who is not the licensing authority cannot pass any final order.

10. For the reasons stated aforesaid, the proceeding as recorded in Annexure-4 and the consequent order as contained in Annexure-3 cannot be held legal. The same deserve to be and are accordingly quashed.

The petition is allowed.