
(2002) 02 JH CK 0121
In the Jharkhand High Court
Case No : CWJC No. 2653 of 2000 (R)

Madhusudan Mahto and Others	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 04-02-2002

Acts Referred:

Citation : (2002) 02 JH CK 0121

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : A. Alam, for the Appellant; D.K. Prasad, JC to AAG, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In this writ application the petitioners have challenged the decision, which was communicated vide letter dated 8.8.2000 and 9.8.2000 issued under the signature of respondent No. 4, Subdivisional Officer, Porhat, Chakradharpur, whereby and whereunder the petitioners' licences under the Public Distribution System have been cancelled.

2. The petitioners were granted licences under unemployed graduate scheme in respect of fair price shop under Public Distribution System being licence Nos. 3/98, 5/ 98 and 7/98. The respondents stopped supply of food grains to the petitioners and suspended the licence on the ground, inter alia, that licence can be issued only to the members of scheduled caste and scheduled tribe. The petitioner Nos. 1 and 2 challenged the decision of the respondents by filing CWJC No. 2051/99(R). The writ application was allowed on 6.10.1999 and the order suspending licence was quashed. The relevant portion of the order reads as under:--

"Having regard to the entire facts and circumstances of the case, I am of the opinion that once licence was issued in favour of the petitioners then it could not have been terminated/cancelled or suspended without giving notice or

opportunity of hearing. Since the respondents violated the principle of natural justice, the impugned orders cannot be sustained in law.

For the reason aforesaid, this writ application is allowed and the impugned orders as contained in Annexure 2 series to the writ application are quashed. However, this order will not debar the respondents from taking action against the petitioners for cancellation of licence in accordance with law after giving reasonable opportunity of hearing."

3. It appears that pursuant to the aforesaid order the licences of the petitioners were restored but subsequently the respondent No. 4 took the same decision and cancelled the licence of the petitioners. I would like to quote the relevant portion of the order passed by the Subdivisional Officer, which reads as under:--

"However, at no point is it denied by them that they are not members of the SC/ST community, which communities alone are entitled to be issued a licence under the Public Distribution System vide letter No. 3874/Aa dated 9.12.1997 of the Good and Civil Supplies Department, Bihar, Patna. They also do not deny that they have been issued licences after the concerned letter was issued.

Therefore, in the interest of social justice and in accordance with the principle of social equity sought to be implemented by the said letter, I order the cancellation of the licence of Madhusudan Mahto granted wrongly to him in contravention of the instructions of the Government.

I am further satisfied that the principle of natural justice have been adhered to in this proceeding."

4. In the counter affidavit filed by the respondent No. 4, Sub-divisional Officer, it is stated that he has acted in accordance with law and under the legal obligation to abide by the direction of the Government. The cancellation of licences of the petitioner is in accordance with the guidelines of the Government and well within his jurisdiction being the licensing authority. It is further stated that the petitioners were granted licence by mistake, overlooking the direction of the Government. A copy of the letter No. 2236 dated 16.5.2000, issued under the signature of Deputy Secretary to the Government, Food Supply and Commerce Department, Bihar, Patna, has been annexed as Annexure-A to the counter affidavit.

5. The Bihar Trade Article (Licences Unification) Order, 1984, besides other things deals with the procedure and the conditions for the grant of Licence. Clause 11 of the Unification order deals with suspension and cancellation of Licence. Clause 11 reads as under:--

"Suspension and cancellation of Licence.--(1) If any licensee or his agent or servant or any other person acting on his behalf contravenes any of the terms and conditions of the licence, then without prejudice to any other action that may be taken against him under the Essential Commodities Act, 1955 (Central Act, 10 of 1955) his licence may be cancelled or suspended with regard to one or more

trade articles by an order in writing of the Licensing Authority and an entry will be made in his licence relating to such suspension or cancellation.

(2) No order of cancellation shall be made under this clause unless the licensee has been given a reasonable opportunity stating his case against the proposed cancellation but during the pendency or in contemplation of proceedings of cancellation of licence, the licence can be suspended for a period not exceeding 90 days without giving any opportunity to the licensee of stating his case. Such suspension shall be limited only to those trade articles regarding which contravention has been made by the licensee."

6. It is therefore clear that the Licensing authority can suspend or cancel the licence of a licensee if he is found to have contravened any provision of this order or terms and conditions of the licence. Admittedly, licences of the petitioners have been cancelled on the ground of some guidelines issued by Department of Civil Supply, Govt. of Bihar, Patna. The Licensing Authority in his order has stated that in the interest of social justice and in accordance with principles of social equity, the guidelines was issued and on that ground licences have been cancelled. In my opinion, the action of the Licensing Authority is absolutely illegal and wholly without jurisdiction.

7. This writ application is therefore allowed and the impugned orders passed by the Licensing Authority are hereby quashed.