
(2011) 09 PAT CK 0089
In the Patna High Court
Case No : CWJC No. 7359 of 2010

Neha Fertilizer and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 30-09-2011

Acts Referred:

Citation : (2012) 1 PLJR 664

Hon'ble Judges : Jyoti Saran, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. Heard Mr. Samir Kumar, learned counsel appearing on behalf of the petitioners and Mr. Anirudh Mishra, learned Assisting Counsel to G.P.-13 appearing on behalf of the State. The petitioners are licensees under the provisions of Fertilizer Control Order, 1985 (hereinafter referred to as "the Order") and are aggrieved by the order dated 17.3.2010 placed at Annexure-4 series, whereby the licences of the petitioners have been cancelled by the respondent no. 4, the District Agriculture Officer, Araria in purported exercise of the power vested under the provision of Clause 28(1)(a) of the Order.

2. The facts of the case are in very narrow compass. The petitioners are retail dealers of Inorganic Fertilizers. Pursuant to a surprise inspection conducted by the Sub-Divisional" Officer, Forbesganj on 6.1.2010 at the shops of these petitioners, they were allegedly found violating the stipulations of the Order. Proceeding on the report submitted by the Sub-Divisional Officer, Forbesganj in this regard, identical show cause notices were served on all these petitioners by the respondent no. 4 the District Agriculture Officer on 27.1.2010 (Annexure-2 series) requiring them to reply to the charges that the signboards were not found at the proper places and that they had not produced their cash-memos. The generality of the show cause is manifest by a perusal thereof. As no specific instances of making delivery without issuance of cash-memo has been mentioned in either of the show cause notices, the petitioners responding to such

general nature of charges filed their respective replies copies whereof are placed at Annexure-3 series denying the allegation set out in the show cause.

3. Following the submissions of the show cause reply, the respondent District Agriculture Officer, by a cyclostyled order dated 17.3.2010 as appended at Annexure-4 series, ordered for cancellation of the licences of the petitioners in purported exercise of power vested under Clause 28(1)(a) of the Order.

4. A bare perusal of the order impugned manifests that neither the replies were considered nor rejected nor the respondent no. 4 has supported the impugned order by any reason or referred to the circumstances in which the petitioners were found violating the aforesaid Clause. On the contrary, by a mere reiteration of the charges set out in the show cause notices, the respondent no. 4 has cancelled the licences of the petitioners in a mechanical manner.

5. A show cause reply filed against proposed cancellation cannot be dealt in such mechanical manner especially when the consequences are extreme in nature resulting in cancellation of the licences affecting the right to the livelihood. By now, it is well settled that the orders imposing penalty cannot be passed in a cyclostyled order-sheet. That itself is a manifestation of non-application of mind by the authority concerned. An authority adjudicating on the rights of any person has to demonstrate an application of mind and while doing so has to support his views with reason.

6. In the present case, even the basic ingredients to effective disposal, is missing. The order impugned does not reflect whether even remotely the author has bothered to examine the defence submitted by the petitioners and perhaps considering the general nature of charges, he had no other option.

7. Any order passed to the prejudice of the delinquent without consideration of his defence; without rejecting the explanation so offered; without holding the delinquent guilty of the charge so set out and in absence of supportive reasons can only be termed as arbitrary and an abuse of the powers vested in the statutory.

8. This court can do no better but to quote the following paragraph from the judgment of the Supreme Court rendered in the case of Travancore Rayon Ltd. Vs. Union of India (UOI), :-

11. In this case the communication from the Central Government gave no reasons in support of the order; the appellant Company is merely intimated thereby that the Government of India did not see any reasons to interfere "with the order in appeal". The communication does not disclose the "points" which were considered and the reasons for rejecting them. This is a totally unsatisfactory method of disposal of a case in exercise of the judicial power vested in the Central Government. Necessity to give sufficient reasons which disclose proper appreciation of the problem to be solved and the mental process by which the conclusion is reached in cases where a non-judicial authority

exercises judicial functions, is obvious. When judicial power is exercised by an authority normally performing executive or administrative functions, this Court would require to be satisfied that the decision has been reached after due consideration of the merits of the dispute, uninfluenced by extraneous considerations of policy or expediency. The Court insists upon disclosure of reasons in support of the order on two grounds one, that the party aggrieved in a proceeding before the High Court or this Court has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were erroneous: the other, that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power.

9. For the reasons aforesaid, the impugned orders dated 17.3.2010 as contained in Annexure-4 series, are quashed and set aside. The writ petition is allowed.