
(1984) 03 PAT CK 0026

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 648 of 1983

Om Narayan Prasad

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 23-03-1984

Acts Referred:

Constitution of India, 1950 — Article 226
Essential Commodities Act, 1955 — Section 3

Citation : AIR 1984 Patna 266

Hon'ble Judges : S.H.S. Abidi, J; Hari Lal Agrawal, J

Bench : Division Bench

Advocate : G.C. Bharuka and Navaniti Prasad Singh, for the Appellant; J.P. Shukla, Govt. Pleader No. 2 and R.K. Choudhary, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner a cement dealer, has filed this writ application challenging the validity of the order dated 7-1-1982 (Annexure 2) cancelling his cement licence.

2. The relevant facts are these: The petitioner obtained a licence for carrying on business in cement under the provisions of the Bihar Cement Control Order, 1972, from the District Magistrate, Purnea. It appears that he was allotted certain quantity of cement by the office order of the District Supply Officer, Purnea, under Memo, dated 9-8-1982 for the third quarter of 1982, but he did not lift the allotted quota in spite of reminders. For this failure on the part of the petitioner the District Supply Officer by his memo, dated 13-10-1982, after stating the said lapse on the part of the petitioner, asked him to submit an explanation as to why his licence be not cancelled for violating the conditions of the licence. Although copy of the "cause" shown by the petitioner has not been filed, it has been stated by him in his application that in the year 1982 he had suspended his business for a few months on account of the serious illness of his minor son.

3. Be that as it may, the impugned order passed by the District Magistrate

cancelling the petitioner's licence states that the above ground, i. e., the illness of his son, was illogical and accordingly he passed the order of cancellation. The petitioner has filed this application against the said order.

4. Two points have been raised in challenge of the order, namely, (1) Clause 6 of the Control Order where the grounds for cancelling or suspending the licence are enumerated, does not include a ground of this nature, and (2) the proceeding having not been initiated by the licensing authority as required by law, the entire exercise was invalid in law inasmuch as, that amounted to the infraction of the principle of natural justice.

5. It may be mentioned that before the amendment of clause 6 of the Cement Control Order by G. S. R. 49, dated 14-9-1082, one of the grounds for cancellation of the licence, namely sub-clause (d) read as follows:

"If the licensee fails to lift the allotment of cement made by the State Government"

This sub-clause was substituted by the above amending circular and now Sub-clause (d) reads as follows:--

"If the licensee fails to carry out the direction of the licensing authority;" It was very rightly pointed out by the learned Advocate appearing for the petitioner, that the amended provision brought by the G. S. R. dt. 14-9-1082 was already there in the licence issued to the dealers, Condition 10 of the licence provides that the licensee shall comply with any direction that may from time to time be given by the State Government and the licensing authority about the maintenance of accounts or the sale or storage of levy and non-levy cement.

6. Sub-clause (b) of Clause 6 of the Licensing Order also provides as a ground for cancellation of the licence, if a dealer contravenes any of the conditions of the licence. It may well be that under Condition No. 10 of the licence the licensing authority may give direction to a licensee only with respect to the maintenance of accounts or the sale or storage of cement and not with respect to lifting of the allotment of cement made by the State Government. However, the original sub-cl. (d) might have been comprehensive enough to overcome this shortcoming in the conditions of the licence.

7. Learned counsel for the State could not point out as to whether the order of allotment gave any direction to the petitioner to lift the allotted cement within a particular time so as to make out a case of failure to "carry out" the direction of the licensing authority within the meaning of the substituted sub-cl. (d). We, however, do not think it necessary to record any concluded opinion on this question as to whether the failure to lift any allotment of cement will furnish a ground for cancellation or suspension of the licence of a cement dealer as, in our opinion, the matter can be more conveniently decided on the other question, namely, the infraction of the principles of natural justice.

8. Before exercising the power to cancel or suspend the licence, the licensing

authority has been enjoined upon with an obligation to give the holder of the licence an opportunity of being heard. It has been seen that the show cause notice was issued in this case not by the licensing authority, namely the District Magistrate, who is undisputedly the licensing authority under the aforesaid Control Order, but by the Supply Inspector. The Supply Inspector, being not the licensing authority could not initiate the proceeding for cancellation of the licence and the notice issued by him, in our opinion, cannot be deemed to be a valid compliance of the mandatory requirement of Clause 6 of the Order. We find full support for this view from an unreported decision dated 1-4-1976 in the case of Krishna Trading Co. v. State of Bihar (C. W. J. C. No. 812 of 1973). That was a case of cancellation of the licence of a wholesale foodgrains dealer under the provisions of the Bihar Food-grains Dealers Licensing Order, 1967. According to the provisions of that Order also, the licensing authority was the District Magistrate, but the notice to show cause was issued by the Sub-divisional Magistrate asking as to why the licence in question be not cancelled. It was observed by this Court as follows:

"A notice for show cause could only be issued by the licensing authority who, in this case was the District Magistrate. In such circumstances this notice to show cause having not been issued by the competent authority, must be quashed."

We may also usefully refer to a Full Bench decision of this Court in the case of Ramnandan Prasad v. State of Bihar 1983 LJR 266 : 1983 TLR 2758. That was a case under the Bihar & Orissa Excise Act and the Collector of Excise was the competent authority to cancel the licence of a country spirit shop. Some irregularities were detected by the Deputy Commissioner of Excise in course of his inspection of the shop of the writ petitioner of that case. Explanation was called for from him and the show cause filed by the writ petitioner was not accepted. The Superintendent of Excise forwarded the show cause along with his finding to the Collector of Excise for passing orders for cancelling the licence and the Collector thereafter passed the order of cancellation of the licence endorsing the views of the Superintendent, without any fresh notice to show cause,

After elaborate discussion of a large number of cases it was held that it was the duty of the licensing authority, namely, the Collector of Excise, to issue the notice and absence of that amounted to infraction of the principle of natural justice,

9. In our considered opinion, the principle enunciated in both the cases has full play and application to the facts of the present case. We would accordingly allow the application and quash the order contained in Annexure 2, but in the circumstances shall make no order as to costs.