
(2014) 08 JH CK 0004

In the Jharkhand High Court

Case No : Writ Petition (Civil) No. 4512 of 2009

Pradeep Kumar

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 28-08-2014

Acts Referred:

Citation : (2015) 1 AJR 654 : (2014) 4 JLJR 247

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Ritu Kumar, Advocate for the Appellant; Shadab Bin Hague, J.C. to G.P. I, Advocate for the Respondent

Judgement

S. Chandrashekhar, J.—Aggrieved by order dated 15.10.2008 passed by the Sub-Divisional Officer, Chas whereby the retail trade license No. 15/BRA/97 issued under the Bihar Trade Articles (Licenses Unification) order 1984 was cancelled and the order dated 11.08.2009 whereby the Misc. Appeal No. 125 of 2008 preferred by the petitioner has been dismissed, the petitioner has approached this Court by filing the present writ petition. The brief facts of the case shorn of unnecessary details are stated thus:

"The petitioner was granted retail license for running a Fair Price Shop in the year, 1997 and since then it was renewed every year on payment of requisite fee. A notice dated 25.07.2008 was issued to the petitioner requiring him to show-cause for the following irregularities noticed:

"(i) Shop was found closed at the time of inspection.

(ii) Notice board containing name of licence, licence No. place found but no space left for display of more information, therefore, it appears outside shop stock of K. Oil, Quantity, sale rate have never been displayed.

(iii) Earlier also tried to make inspection but the shop was never found open.

(iv) List of beneficiaries not found displayed.

(v) Shop is in a jhopri of which card holders have no information.

(vi) Some card holders alleged that K. oil is not distributed.

(vii) On 12.7.2008 lifted 400 Lts. of K. Oil but as shop remain closed must have sold in black market."

2. The Sub-Divisional Officer opined that in view of the irregularities noticed above, it appears that the petitioner was selling kerosene oil in black market and accordingly, he was directed to produce Stock Register, Sell Register and Unit Register for the year, 2007-08 and 2008-09. The license of the petitioner was suspended in the meantime, though no hearing was afforded to the petitioner before suspending the license. The petitioner submitted his reply on 04.08.2008 taking a specific plea that he was suffering from fever and that was the reason on 20.07.2008 the shop was closed. Along with reply dated 04.08.2008 a medical certificate and copies of Stock Register, Unit Register, Sell Register etc. were also submitted. The petitioner was further directed to file an affidavit and also a consolidated show-cause as the reply dated 04.08.2008 was found not satisfactory. In view of the verification made through Block Supply Officer another notice dated 28.08.2008 was issued to the petitioner for cancellation of the license. On 20.09.2008, the petitioner submitted a reply stating as under:

"(i) Pursuant to earlier notice to show cause dated 25.7.08 (Annexure-1) show cause reply has been filed on 04.08.08 (Annexure-3).

(ii) Affidavit in support of photo copy of stock Sale, Unit register has already been filed on 26.08.08.

(iii) Alleged enquiry conducted from 13 cardholders by the Block Supply Officer B.S. City is concerned the same is misleading. The cardholders have given in writing that they are regularly getting the supply of K. Oil.

(iv) So far as transfer of 2 cardholders is concerned the petitioner had no information whenever Card is produced the petitioner has to supply K. oil.

(v) Tapeshwar Sharma-Maheshwar Sharma at 2 places is human error.

(vi) Wife of S.N. Chokravorty has given in writing that she gets K. oil from the shop of petitioner.

(vii) Difference in signature is due to the fact that the person taking delivery signs it as he likes causing difference in signature.

(viii) Whenever/whatever direction was given it was complied with."

3. Vide letter dated 15.10.2008 the license bearing no. 15/BRA/97 issued to the petitioner was cancelled. Aggrieved by order dated 15.10.2008, the petitioner preferred an appeal before the Deputy Commissioner under Clause 23 of the Unification Order and it was registered as Misc. Appeal No. 125 of 2008. The appeal was also dismissed vide order dated 11.08.2009 and therefore, the petitioner has approached this Court.

4. A counter-affidavit has been filed on behalf of respondent Nos. 2 and 3 stating that earlier in the year, 2004 the license of the petitioner was, cancelled however, vide order dated 15.12.2004 in Misc. Appeal No. 03 of 2004 the order of cancellation was set-aside. In the present case after perusing the show-cause, inspection report of the Sub-Divisional Officer and Block Supply Officer and previous allegations against the petitioner, serious irregularities were found to have been committed by the petitioner in violation of the conditions of license and therefore, a notice was issued before cancellation of the license.

5. Mrs. Ritu Kumar, the learned counsel appearing for the petitioner has submitted that the order passed by the Sub-Divisional Officer, Chas, travels beyond the show-cause notice issued on 25.07.2008 which is not permissible in law. The notice dated 25.07.2008 was issued because the Fair Price Shop of the petitioner was found closed on 20.07.2008 when it was inspected by the Sub-Divisional Officer. The alleged irregularities mentioned in the notice dated 25.07.2008 are apparently frivolous since the petitioner had been running the fair price shop since 1997 and no complaint/objection was ever made. It is further submitted that the appellate order is a cryptic order and therefore, it is liable to be quashed.

6. The learned counsel appearing for the respondent-State of Jharkhand reiterated the stand taken in the counter-affidavit and submitted that the petitioner is a habitual defaulter. On verification 13 cardholders had alleged that they never received any supply from the shop of the petitioner. Since several irregularities were found in running the Fair Price Shop, the license was cancelled. The reply of the petitioner has been properly considered and the matter does not require any interference by this Court.

7. I have considered the submission of the learned counsel appearing for the parties and perused the documents on record.

8. It is a matter of record that though in notice dated 25.07.2008 it is mentioned that on 19.07.2008 as well as on earlier occasions also the Fair Price Shop run by the petitioner was found closed, no notice in this regard was ever issued to the petitioner nor this fact was ever brought to the notice of the petitioner. Neither the petitioner was supplied any document nor any document indicating inspection carried on 19.07.2008 or on earlier occasions has been brought on record. The notice dated 25.07.2008 has been issued because the Fair Price Shop of the petitioner was found closed on 20.07.2008 when an inspection was conducted by the Sub-Divisional Officer, Chas. The petitioner has submitted a medical certificate stating that he was suffering from fever between the period 18.07.2008 and 22.07.2008. The medical certificate submitted by the petitioner has not been found forged or unreliable. It is not the case of the respondents that the petitioner took a false plea. The petitioner has submitted detailed reply however, it does not appear that the reply submitted by the petitioner has been considered in right perspective. It is a fact that the petitioner was granted license for running the Fair Price Shop in the year, 1997 and in the year, 2004 when the

license was cancelled, it was restored by the order passed in Misc. Appeal No. 03 of 2004. It is well settled that for absence of one day, an order terminating the license cannot be passed. In Hind Construction and Engineering Co. Ltd. Vs. Their Workmen, , a case in which, the employee was dismissed from service for his absence from duty for one day, the Hon"ble Supreme Court has held as under

7. "..... It is impossible to think that any other reasonable employer would have imposed the extreme punishment of dismissal on its entire permanent staff in this manner.....On the whole, therefore, though we emphasise again that a Tribunal should not interfere with the kind or severity of punishment except in very extraordinary circumstances, we think that interference was justified in this case because the punishment was not only severe and out of proportion to the fault, but one which, in our judgment, no reasonable employer would have imposed."

9. A perusal of order dated 11.08.2009 passed by the Deputy Commissioner-cum-District Collector, Bokaro indicates that only on the ground that S.D.O., Chas has considered the show-cause submitted by the petitioner, the appeal has been dismissed. I am of the opinion that while hearing the appeal, the appellate authority is required to consider the plea taken by the appellant and record his independent finding on the issues raised in the appeal. The order passed by the appellate authority is a cryptic order which does not indicate application of mind to the contentions raised by the petitioner and therefore, the appellate order is liable to be quashed.

10. In view of the above discussion, orders dated 15.10.2008 and 11.08.2009 are quashed and the matter is remitted back to the Sub-Divisional Officer, Chas for a consideration of the petitioner's case afresh. Let such a decision be taken within a period of six weeks upon furnishing a copy of this order. The writ petition is allowed in the aforesaid terms.