

(1964) 07 MP CK 0001
In the Madhya Pradesh High Court
Case No : M.P. No. 65 of 1964 (J)

Salamatrai

APPELLANT

Vs

Collector Raipur

RESPONDENT

Date of Decision : 07-07-1964

Acts Referred:

Rice Milling Industry (Regulation) Act, 1958 — Section 7(1)

Citation : (1964) JLJ 466

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari and M.V. Tamaskar, for the Appellant; R.J. Bhawe, Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

P.V. Dixit, C.J.—The petitioner in this case prays that a writ of certiorari be issued for quashing an order passed on 8th January 1964 by the Collector, Raipur, as licensing Officer under the Rice Milling Industry (Regulation) Act, 1958, (hereinafter called the Act), suspending for a period of six months the license granted to the petitioner under the Act for carrying on rice-milling operation in his rice mill. The petitioner preferred an appeal before the Director of Food and Civil Supplies against the Licensing Officer's order, who while maintaining the suspension of the licence, reduced the period of suspension to two months. A writ of certiorari is sought for quashing this order also.

2. The facts are that on the basis of an inspection of the petitioner's account books by the Food Inspector, Raipur, on 30th November 1963, a notice signed by the Food Officer, as "Food Officer, for Collector, Raipur" issued to the applicant on 3rd December, 1963, telling him that the stock of rice and paddy as shown in his account books and as actually found with him on physical verification did not tally; that the stock actually found was less than the quantity shown as "opening balance"; that it appeared that he had sold some rice without keeping any accounts thereof; that on 30th November he had sold and despatched eight bags

of rice to Bhilai; that he did not issue any cash-memo for this sale and did not also enter the transaction in his account books; and that thus he had committed a breach of rule 9(1) of the Rice-Milling Industry (Regulation and Licensing) Rules, 1959. The notice asked him to show cause within a week of its receipt as to "why action should not be taken against you (the petitioner) and your milling licence revoked". The petitioner submitted his explanation in writing to the Food Officer on 9th December 1963 endeavouring to show that he had not committed any breach of the aforesaid rule 9(1). The Food Officer then placed before the Collector the report of the Food Inspector and the explanation given by the applicant to the show-cause notice issued to him. The Collector heard the petitioner on 24th December 1963 and thereafter passed the impugned order. The Collector rejected the petitioner's explanation that he had kept some stock and paddy in a godown rented by him in Prakash Rice-Mill, and found that when the stock was checked on 30th November 1963, there was unaccounted deficiency of 159.64 quintals of rice and 32, 13 quintals of paddy, and that thus on account of this shortage the petitioner had committed a breach of rule 9 (1) of the said Rules.

3. Shri Dharmadhikari, learned counsel for the petitioner, assailed the order of the Licensing Officer suspending the petitioner's licence on the ground that the show-cause notice, which was issued to the petitioner on 3rd December 1963, was issued by an officer who had no jurisdiction whatsoever u/s 7 of the Act to revoke or suspend a licence granted under the Act; that under the Act the Licensing Officer was the Collector; that the notice, which was issued to the petitioner to show cause, was neither signed by the Collector nor authorised by him; and that, therefore, the notice was invalid and the proceeding initiated against the petitioner resulting in the suspension of the licence were altogether illegal and without jurisdiction.

4. In our judgment, this contention must be given effect to. Section 7(1) of the Act, which deals with revocation and suspension of licences granted under the Act, is as follows-

7. (1) If the Licensing Officer is satisfied, either on a reference made to him in this behalf or otherwise, that-

(a) a licence granted u/s 6 has been obtained by misrepresentation as to an essential fact, or

(b) the holder of a licence has without reasonable cause, failed to comply with the conditions subject to which the licence has been granted or has contravened any of the provisions of this Act or the rules made thereunder, then, without prejudice to any other penalty to which the holder of the licence may be liable under this Act, the licensing officer may, after giving the holder of the licence an opportunity of showing cause, revoke or suspend the licence or forfeit the sum if any, or any portion thereof deposited as security for the due performance of the conditions subject to which the licence has been granted.

It will be seen that section 7 (i) first speaks of the Licensing Officer being satisfied, either on the report made to him or otherwise, that the licensee obtained a licence by misrepresentation as to an essential fact or that he has without a reasonable cause contravened the conditions of the licence, any provision of the Act or the rules made thereunder. It then says that if the Licensing Officer is so satisfied, then he may, after giving the holder of the licence an opportunity of showing cause, revoke or suspend the licence or forfeit the sum wholly or partly deposited as security by the licensee for the due performance of the licence-condition. The satisfaction of the Licensing Officer as to the matters stated in clause (a) or (b) of section 7 (1) is essential before the holder of a licence can be called upon to show cause against the action proposed to be taken against him. It is only after the licensee is given an opportunity of showing cause against the charge or charges levelled against him and the action proposed to be taken that his licence can be revoked or suspended or the deposit amount forfeited. The language of section 7(1) is plain enough to show that if the holder of a Licence has committed any of the acts mentioned in clause (a) or clause (b) of section 7 (1) then it is for the Licensing Officer to be satisfied that prima facie he is guilty and deserves the punishment proposed. The satisfaction of the Food and Civil Supplies Inspector, who is not the Licensing Officer, cannot be substituted for the satisfaction of the Licensing Officer. The words "either on a reference made to him in this behalf or otherwise" occurring in section 7(1) no doubt permit the Licensing Officer to satisfy himself as to the matters mentioned in section 7 (1) on the basis of a report made by a Food Inspector or any officer or on information collected by him, that is the Licensing Officer, in any way. But the report of the Food Inspector that the holder of a licence has obtained the licence by misrepresentation or has committed a breach of the conditions of the licence or of the provisions of the Act or the rules made thereunder is not binding on the Licensing Officer. The Licensing Officer is required to draw his own conclusions and satisfy himself on the report placed before him or the facts collected by him whether any action against the holder of a licence should be taken u/s 7(1) after giving the licence-holder an opportunity of showing cause. Then the Licensing Officer has satisfied himself that section against the holder of a licence should be taken u/s 7(1) and that a show-cause notice should be issued to him, then he may himself issue the notice and sign it or he may authorise any other officer to issue the approved notice on his behalf. It is not necessary that the Licensing Officer should himself sign the notice. What is essential is the "satisfaction" of the Licensing Officer before the issue of a notice and authorisation by him for the issue of the show-cause notice on the basis of his satisfaction. The requisite satisfaction of the Licensing Officer u/s 7 (1) is no doubt evident when the notice is signed by the Licensing Officer himself. But Where the notice is not signed by him but by some other officer on his behalf, then there must be some material to show that the Licensing Officer authorised the issue of the notice after satisfying himself as to the matters mentioned in section 7(1).

5. In the present case, the notice which was issued to the petitioner was signed by the Foodas "Food Officer, for the Collector". In return filed by the respondents, it is nowhere stated that the Collector, Raipur, who is the Licensing Officer under the Act, first satisfied, himself that the petitioner had prima facie committed a breach of the rules and then authorised the Food Officer to issue a notice, on his behalf to the petitioner. On this point, the respondent's statement is simply this that the show-cause notice was signed by the Food Officer "for the Collector" and was properly issued. The original record of the proceedings before the Collector, which was placed before us, shows that the Food Officer issued the show-cause notice to the petitioner on his own authority when the Assistant Food Officer submitted to him the report of the Food Inspector about the inspection of the petitioner's account on 30th November 1963. Before the issue of the notice by the Food Officer the matter was not placed before the Licensing Officer at all. It was after the petitioner's explanation was received in reply to the notice given to him that the report of the Food Inspector and the office notes of the Assistant Food Officer and the Food Officer were placed before the Collector, that is the Licensing Officer, for orders. The Licensing Officer then made an order on 16th December 1963 directing the Food Inspector to inform him whether in the licence granted to the petitioner there was any mention of the rented godown in the Prakash Rice-Mill and farther saying that the petitioner should be asked whether he wished to be heard before the passing of final orders, and if so, he should present himself on 24th December 1963. It is thus plain that the show-cause notice, which was issued to the petitioner, was neither authorised by the Licensing Officer nor based on his satisfaction as to the matters mentioned in clause (a) or (b) of section 7 (1) of the Act. The petitioner could have ignored this notice, issued to him by an officer who had no jurisdiction at all, and not given any explanation. The fact that he gave an explanation in reply to this notice does not cure the defect of the invalidity of the notice or the proceedings initiated thereon. So also, the order passed by the Collector on 16th December 1963 saying that the petitioner should be asked to state whether he desired, to be heard before the passing of final orders and if so, he should present himself in the Court on 24th December 1963 cannot in any sense be regarded as an order of the Collector asking the petitioner to show-cause against the charge of a breach of rule 9 (1) and the intended action of revocation of the licence. In our opinion, the show-cause notice issued to the petitioner by the Food Officer was wholly without jurisdiction and consequently the order passed by the Licensing Officer on 8th January 1964 suspending the petitioner's licence cannot be held to have been passed in conformity with the provisions of section 7(1) of the Act.

6. For these reasons, this petition is allowed and the order dated the 8th January 1964 of the Collector, Raipur, suspending the petitioner's licence, as also of the Director of Food and Civil Supplies upholding the suspension for a period of two months, are quashed, the petitioner shall have costs of this application. Counsel's fee is fixed at Rs. 75/-. The outstanding amount of security deposit shall be refunded to the petitioner.