
(2006) 08 JH CK 0106
In the Jharkhand High Court
Case No : WPC No. 2331 of 2006

Sanjay Kumar Sahu @ Sanjay Sahu	Vs	APPELLANT
State of Jharkhand and Others		RESPONDENT

Date of Decision : 01-08-2006

Acts Referred:

Citation : (2006) 4 JCR 279

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

Bench : Single Bench

Advocate : Anil Kr., S.K. Keshri, L.Kr. and R. Pallav, for the Appellant; R.R. Mishra, G.P.II, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In this writ application the petitioner has prayed for quashing the order as contained in memo No. 736 dated 23.12.05 issued by respondent No. 2 Deputy Commissioner, Gumla whereby the license granted to the petitioner under Bihar Trade Article (License Unification) Order, 1984 has been cancelled at the instance of the District Supply Committee.

2. Petitioner's case lies in a narrow compass:

Petitioner was granted retail license under the Unification Order, 1984 for running fair price shop. The said license was time to time renewed and the petitioner carried on business of fair price shop. By order dated 25.7.2005 license of the petitioner was suspended and show cause notice was issued by the Assistant District Supply Officer, Gumla vide memo dated 27.7.2005. Petitioner submitted his show cause. It is stated that on the complaint of some card holders, the Block Supply Officer enquired into the matter and it was reported that consumers are pressing hard for revocation of suspension of the license of the petitioner but inspite of that petitioner was shocked and surprised when he received the impugned order of cancellation of license. It is contended by the petitioner that no notice to show cause and opportunity of hearing was given nor any

proceeding was initiated by the Licensing Authority before cancellation of license.

3. A counter affidavit has been filed by the respondents stating inter alia that order of suspension and the cancellation of license were rightly passed after taking recourse and after making enquiry by the officials of the Government. The case of the respondents is that under the Government's direction vide memo No. 800 dated 16.5.2005, a Local District Supply Committee was constituted to examine in respect of grant/suspension or cancellation of license. After its constitution, a meeting of the said Committee was held and the case of the petitioner and others were taken and decision was taken for cancellation of license. On the basis of the decision of the Committee, the S.D.O Gumla passed the order of cancellation with immediate effect.

4. I have learned Counsel appearing for the parties.

5. From perusal of the impugned order passed under the signature of S.D.O. Gumla, it is manifestly clear that the order of cancellation was passed by the S.D.O. Gumla on the basis of recommendation made by the District Supply Committee. Neither any proceeding for cancellation of license as contemplated under the Unification Order, 1984 has been initiated by the Licensing Authority, namely, S.D.O. nor opportunity of hearing was given to the petitioner. According to the respondents, the Food Supply and Commerce Department, Govt. of Jharkhand issued a direction vide memo No. 800 dated 16.5.2005 that henceforth the District Supply Committee will examine the matter relating to grant of license, suspension, cancellation etc. and the matter will be examined by the Committee and in the light of the recommendation made by the Committee the S.D.O. will issue order.

6. Recently this Court has considered the same question in the case of Madhu Sudan Jha and Md. Nisar Alam. v. The State of Jharkhand and Ors. (2006)2 BLJR 1141 (Jhr.) and observed :

As noticed above, the Dinar Trade Articles (Licences Unification). Order, 1984 lays down a procedure for the grant, suspension, renewal or cancellation of licence. For the purpose of cancellation of licences, the licensing authority has to comply the mandatory requirement of Clause 11 of the order. In other words, no order of cancellation shall be passed by the licensing authority unless the licensee has been given reasonable opportunity to put his case against the proposed cancellation. Contrary to this statutory provision, the Food and Civil Supply Department issued executive instruction/guidelines conferring powers to the committee constituted under the said guidelines. The said guidelines, inter alia, provide that henceforth the matter relating to grant of licence, renewal, suspension or cancellation of licence, shall be considered first by the committee and the recommendation of the committee shall be sent to the department for approval or disapproval. The procedure provided in the said guidelines is wholly unconstitutional and in conflict with the statutory provisions contained in the unification order. Such guideline is, therefore, liable to be struck down.

7. Admittedly, petitioner was not given opportunity of hearing by the so-called Committee before recommending the case of the petitioner to the Licensing Authority for cancellation of license. The Licensing Authority has also not given opportunity of hearing to the petitioner before issuing the impugned order of cancellation of license. In my view, if the power is vested with the District Supply Committee as aforesaid, then the Licensing Authority will become, merely a post office and the Unification Order, 1984 will become redundant. The impugned order for cancellation of license on the basis of recommendation made by the Committee and communicated by the Licensing Authority is wholly illegal, arbitrary and violative of principles of natural justice and the same, therefore, cannot be sustained in law.

8. For the aforesaid reasons, this writ application is allowed and the impugned order of cancellation of license of the petitioner is quashed.