
(2008) 03 RAJ CK 0028
In the Rajasthan High Court

Sanjay Sharma

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 07-03-2008

Acts Referred:

Citation : (2008) 3 RLW 2680

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mohammad Rafiq, J.—This writ petition has been filed against the order dated 8.5.2000 whereby the revision petition preferred by the District Supply Officer was allowed by the Food Commissioner and the order passed by the Collector in the appeal of the petitioner dated.,13.8.1999 was set aside.

2. The petitioner was a licensee of the fair price dealer having shop No. 542A in Jaipur City. The respondent undertook the massive drive of checking fair price shops in the month of December, 1996. The petitioner's shop was also inspected on 15/16.12.1996 by the District Supply Officer (hereinafter referred to as "DSO") of the Headquarters. The show cause notice was issued to him on 26.12.1996 which was replied to by the petitioner. The licence of the petitioner was cancelled and his security amount forfeited by the DSO (Headquarters) vide order dated 13.5.1997. The petitioner preferred appeal against the said order before Collector, Jaipur under Clause 22 of the Rajasthan Foodgrains and Other Essential Articles (Regulation of Distribution) Order 1976. The Collector by order dated 13.8.1999 allowed the appeal holding that no proper enquiry was conducted pursuant to the notice issued by the DSO and that the major charges against the petitioner were not proved and that the charges were not serious enough to warrant cancellation of the licence. The revision petition filed thereagainst was however allowed by the Commissioner vide order dated 8.5.2000 which is impugned in the present proceedings.

3. Learned Counsel for the petitioner has argued that the licencing authority of the petitioner was DSO and therefore the District Collector and not the DSO, (Headquarters) of the respondent department had no jurisdiction to cancel his licence. Even if the inspection was carried out by the DSO, (Headquarters), his licence could not have been cancelled without conducting an enquiry. It is argued that even though demanded by the petitioner, he was not supplied with the proper records, which was already seized by the respondent to submit the reply to the show cause notice. Charge No. 1 was to the effect that the shop when inspected on 15.12.1996 at 5.10 PM, was found closed and on 16.12.1996 also, it was found closed when inspected at 5.00 PM. In view of the Circular of the Government dated 23.9.1992, such lapse was held to be mere irregularity and was not considered serious enough to warrant cancellation of the licence. It was argued that the respondents did not correctly calculate the stock of the shop and in doing so, did not at all give the benefit of shortage which, according to the aforesaid Circulars, was permissible to the extent of 1.5%. The District Collector on consideration of this Circular, when reassessed the stock, found the charges against the petitioner not proved. It was argued that the revisional authority has not recorded any specific finding with reference to the case of the petitioner and decided 16 revision petitioners by a common order. As per the provisions of Clause 22-A of the Rajasthan Foodgrains and Ors. Essential Articles (Regulation of District) Order, 1976, the revisional authority can interfere only if it records a finding of jurisdictional error on the part of appellate authority. Reference in this connection was made to the judgment of this Court dated 25.5.05 in S.B. Civil Writ Petition No. 2721/2000, Shri Manmohan Gupta v. State of Raj. and Ors. It was therefore prayed that the writ petition be allowed.

4. Shri Sanjay Srivastava, learned Deputy Govt. Counsel opposed the writ petition and argued that the licence of the petitioner was rightly cancelled because various irregularities were found against him. The licence was cancelled after opportunity was afforded to the petitioner and on the basis of evidence collected at the time of inspection. It was argued that the involvement of staff and the District Supply Officer of the Headquarters are merely competent to undertake the inspection and cancel the licence on proving irregularities. It was argued that on the basis of material available on record, the District Collector could not reverse the order of cancellation of licence and his doing so amounted to jurisdictional error on his part. The revisional authority therefore had rightly interfered.

5. Clause 22A of the Rajasthan Foodgrains and Ors. Essential Articles (Regulation of District) Order, 1976 reads as under:

22A. Revision- The Commission suo moto or on an application, may, call for the record of any case decided by the Collector or any other officer authorised by the State Government in this behalf under the provisions of this prder and if he is satisfied that the Collector or the authorised officer-

(a) has exercised a jurisdiction not vested in him, or

(b) has exercised the jurisdiction vested in him with material irregularity, or he may pass such orders as he may think fit.

6. It would be evident from the above Clause 22A that the revisional authority could have interfere with the order of District Collector only if it had found that the Collector No. 1 (i) has exercised a jurisdiction not vested in him material irregularity or (ii) has exercised the jurisdiction vested in him with material irregularities or (iii) has improperly failed to exercise the jurisdiction vested in him. The case of the present nature cannot be said to be fall in either the first or third category because it is not even the case of the respondents that the Collector exercised the jurisdiction not vested in him and that he improperly failed to exercise the jurisdiction vested in him. The fact that the Collector had the authority to entertain and decide the appeal against the order of cancellation of the licence is incontrovertible. Even otherwise, Clause 22 of the Control Order provides that any person, aggrieved by an order made by any officer lower in rank than the Collector may appeal to the Collector. Admittedly the order of cancellation of the licence of the petitioner was made under the provisions of aforesaid Control Order of 1976 and therefore the remedy of appeal provided thereagainst in Clause 22 of the Control Order was available to the petitioner. For the same reason, therefore, it cannot be said that the Collector improperly exercised jurisdiction vested in him. The case of the respondents, however can be said to fall under the second clause where the petitioner is required to prove that the Collector has exercised the jurisdiction vested in him with material irregularity. Reading order of the Collector makes it clear that Collector recorded a categorical finding that while calculating the stock the respondents did not correctly verify the records and also did not give benefit of shortage to the petitioner. The Collector also relied on the Government Circular referred to above, both for the purpose of benefit of shortage as also for the charge that the shop of the petitioner was not found open when inspected on 15.12.96 at 5.10 PM and 16.12.96 at 5.00 PM. The Collector also on the authority of aforesaid Circular stated that such irregularity on the part of the dealer of a fair price shop has not been treated as serious enough even by the government so as to warrant cancellation of the licence. The Collector thus recorded a specific finding upon hearing all the parties. In contrast, however, when the order of revisional authority is examined, it is found that the revisional authority while deciding sixteen revision petitions by a common order made similar observations with reference to all sixteen cases and a general direction with regard to the irregularities so made. No finding whatsoever was given on the question that the petitioner was not provided with the records inasmuch as a regular enquiry was not held so as to enable him to meet the charges. The Coordinate bench of this Court in Manmohan Gupta, supra while examining validity of the very same order of the Food Commissioner passed by him in exercise of his revisional jurisdiction held that the District Collector passed the order in exercise of the power conferred upon him under Clause 22A of the Control Order and the Food Commissioner interfered therewith without recording any evidence that Collector

did so in excess of his jurisdiction or committed material irregularity while exercising such jurisdiction.

7. In the facts of the present case, I am also not persuaded to uphold the argument of the petitioner that the revisional authority interfered with the order of District Collector acting beyond the pale of his jurisdiction or acted outside the scope of Clause 22A of the Control Order of 1976. He has not specifically dealt with any of the findings recorded by the District Collector. The revisional authority may have had the opportunity to decide identical revision petitions together by a common order but in doing so, it was certainly required to discuss and deal with findings recorded by the Collector in each of the cases separately by giving reasons for upsetting the findings recorded by the Collector because no generalisation can be made with regard to the irregularities committed by different licensees of fair price shops.

8. In view of the discussion made above, the present writ petition deserves to be allowed and is accordingly allowed. The order of Food Commissioner is set aside in so far as it is concerned with the petitioner. There shall be no order as to costs.