
(2012) 01 PAT CK 0136
In the Patna High Court
Case No : CWJC No. 13890 of 2006

Sita Ram Keshri Sao

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 05-01-2012

Acts Referred:

Citation : (2012) 2 PLJR 719

Hon'ble Judges : Ravi Ranjan, J

Bench : Single Bench

Advocate : Birendra Kumar, for the Appellant; Yogendra Kr. Singh For the State, for the Respondent

Judgement

Dr. Ravi Ranjan, J.—Heard learned counsel for the petitioner and the State. Petitioner is aggrieved by the orders dated 13.7.2004, 9.1.2006 and 7.9.2006 (as contained in Annexures-2, 5 and 3) passed by respondent no. 5, the Sub-Divisional Officer, Sherghati, Gaya, the Licensing Authority, cancelling the agreement for the dealership for the purpose of running a Public Distribution System Shop as well as the respondent nos. 4 and 3 respectively affirming the original order.

2. It is submitted on behalf of the petitioner that show cause notice (Annexure-1) was served upon several persons including the petitioner to explain as to why his agreement and dealership should not be cancelled for running the Public Distribution System Shop. The petitioner, thereafter, filed his show cause (Annexure-4). However, the final order dated 13.7.2004, as contained in Annexure-2, has been passed by Sub-Divisional Officer, Sherghati, Gaya cancelling his agreement and ending the concerned dealership. The petitioner preferred an appeal before the Collector, however, the same was also dismissed vide order dated 9.1.2006, as contained in Annexure-5. A revision was also filed bearing Revision Case No. 9/2006 before respondent no. 3, but the same was also dismissed vide order dated 7.9.2006, a copy of which is available as Annexure-3.

3. A stand has been taken by the petitioner that without proper consideration of his show cause, the agreement has been cancelled by an order which appears to have been passed in a mechanical manner without application of mind. It is submitted that the appellate as well as revisional authority also have not passed the orders after properly considering the case of the petitioner as raised in his show cause. The revisional authority has evaded from deciding the issues raised by the petitioner on the ground that these matters are to be decided by the original as well as the appellate authority only after recording evidence to that effect and the same cannot be decided by the revisional authority.

4. A counter affidavit as well as supplementary counter affidavit has been filed on behalf of the State. A copy of the inspection/inquiry report has also been brought on record. Learned counsel for the State submitted that upon the complaint made by certain persons, who have been described in the complaint petition, brought on record as Annexure-A to the supplementary counter affidavit, a proceeding was initiated against the petitioner and inquiry/inspection of shop was held. At the time of inspection, the shop was found closed and no notice board was attached in front of the shop. It is further contended that the report reveals that the petitioner was selling the kerosene oil at higher price of Rs. 12.50/- per liter.

5. However, a stand has been taken in the show cause by the petitioner that the shop was closed for the reason that one of his children was ill and he had gone for treatment. He has denied that he has ever sold the kerosene oil at higher price. It is also submitted that the area being disturbed one somebody always snatches the notice board which is affixed in front of the shop. However, there is no consideration of these issues in the final order passed either by the licensing authority or the appellate or revisional authority. It is also pointed out that even in the inquiry report there is no indication as to on what basis or materials the Inquiry Officer has come to the conclusion that the petitioner was selling kerosene oil at a higher price of Rs. 12.50/- per liter.

6. Opportunity was given to the State for filing counter affidavit and thereafter also for filing supplementary counter affidavit only with a view that the necessary evidence would be brought on record upon which the decision has been taken by the licensing authority. Though the inquiry report has been brought on record by way of Annexure-B to the supplementary counter affidavit, however, it also does not disclose any discussion by the Inquiry Officer regarding the materials available, evidence or even the names of the persons who were examined during the course of the inquiry or inspection. No such material has also been brought on record by the State even alongwith the counter affidavit to indicate the same.

7. It appears that chiefly three grounds have been raised by the petitioner in the show cause before the licensing authority. Firstly, the reason for closure of the shop, secondly, explaining the reason why the notice board was not affixed in front of his shop and lastly, his denial that he has ever sold the kerosene oil at a higher price. No finding appears to have been recorded by the licensing authority

for rejecting the assertion made in the show cause pointing out the materials available on record to suggest that the petitioner was engaged in malpractice. It has simply been stated that though the petitioner has denied all the charges he has not been able to justify selling of kerosene oil at a higher price. This is very surprising since the petitioner has already denied the allegation of selling kerosene oil at higher price, the licensing authority was duty bound to discuss as to what were the reasons to reject his show cause and what were the evidences collected during the course of inspection which suggested that the petitioner was selling the kerosene oil at higher price.

8. In above view of the matter, in opinion of this Court, it appears that the order has been passed in a mechanical manner and even inquiry report does not suggest as to what materials were available on record to show that the petitioner was indulged in malpractice. Thus, the order passed by the licensing authority cannot be sustained in its present form as it is well-settled that if some order is being passed by the authority visiting consequence on the concerned person, it must assign reason and discuss the averments made in the show cause. Failure to do it would amount to be serious lacuna. The appellate as well as revisional orders also do not disclose any proper consideration of the show cause or the materials on record disclosing that the petitioner was indulged in any malpractice. However, it is also well settled that even in the cases where there has been necessary consideration of the materials on record by the appellate authority, the same could not be able to cure the defect in the original order if it has been passed without assigning any reason. Reference is made to a decision of the Division Bench of this Court in *M/s Umesh Chandra Dinesh Kumar vs. State of Bihar and Others*, 1999(1) BLJ, 548. As a result, this application is allowed and the order dated 13.7.2004 (Annexure-2), 9.1.2006 (Annexure-5) and 7.9.2006 (Annexure-3) are quashed and the matter is remitted back to the licensing authority to consider the case of the petitioner afresh and pass necessary order in accordance with law after consideration of the show cause filed by the petitioner as well as the materials including the evidence available on record, by recording reasons within six weeks from the date of production of a certified copy of this order by the petitioner. It is made clear that this order would not amount to automatic resumption of supplies to the petitioner for running PDS shop as the same would depend upon the order which would be passed by the licensing authority.