
(2006) 05 OHC CK 0046
In the Orissa High Court
Case No : Writ Petition (C) No. 8686 of 2003

Smt. Meena Swain

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 12-05-2006

Acts Referred:

Citation : AIR 2006 Ori 152 : (2006) 102 CLT 163 : (2006) 2 OLR 90

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : D.K. Mishra, G.K. Nayak and R. Mohalik, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

L. Mohapatra, J.—The petitioner who had been appointed as a sub-wholesaler in kerosene oil for Bandhapara in the district of Bolangir has filed this writ application challenging the order passed by the Collector, Bolangir in Annexure-4 on 3.3.2001 cancelling her licence as well as the order passed by the appellate authority in Annexure-6 dated 5.7.2003 dismissing the appeal.

2. The case of the petitioner is that she had been appointed as a Sub-wholesaler in Kerosene oil for the village Bandhapara in the district of Bolangir. The Collector, Bolangir issued a notice to show cause on 4.1.2001 directing the petitioner to submit her explanation as to why the licence shall not be cancelled on the grounds mentioned in the said show cause notice. The petitioner submitted her reply to the said show cause notice and the impugned order was passed by the Collector in Annexure-4 on 3.3.2001 cancelling the licence. The petitioner thereafter challenged the said order of the Collector before the appellate authority and the appeal having been dismissed, this writ application has been filed.

The petitioner was asked to show cause as to why the licence shall not be cancelled on the following grounds:

(i) Though the licence has been issued in her favour, she is not running the business and has entrusted the same to one Smt. Renuka Patra, a sub-wholesaler of Deogaon and she also engaged one Laxman Naik for distribution of kerosene oil.

(ii) She was not opening the sub-wholesale depot regularly and whenever the retailers want to lift the stock of kerosene, they used to contact Smt. Renuka Patra.

(iii) She was issuing kerosene oil in the evening hour and the complaint is that while the retailers want to lift the stock of kerosene, they were given 15 to 20 litres less kerosene in every barrel.

(iv) She was not maintaining the stock of accounts properly.

3. In reply to the aforesaid notice to show cause, the petitioner submitted her reply in Annexure-3 stating therein that she had entrusted the business to her brother Laxmah Naik under a registered deed of power of attorney during the period she was pregnant in the year 2000. The allegation that she had entrusted the business to Smt. Renuka Patra was denied. The other allegations were denied by the petitioner. Considering the reply of the petitioner, the Collector found her guilty of the following irregularities:

(i) The explanation submitted by the sub-wholesaler is found to be incorrect and false and as such there is contravention of condition No. 4 of the Kerosene Oil Sub-wholesale Licence.

(ii) The Sub-wholesaler was found to have issued to retailers 15 to 20 litres less in every barrel of 200 litres.

(iii) The continuance of the said sub-wholesaler was found to be detrimental to the interest of Public Distribution system.

The said order was challenged before the appellate forum and the appeal was dismissed on 5.7.2003 holding that there was complaint against the petitioner for irregularities in supply of kerosene oil to the retailers and the petitioner had entrusted her brother Laxman Naik to run the business and the said Laxman Naik being illiterate was not keeping the account properly.

4. Shri D. K. Mishra, the learned Counsel appearing for the petitioner challenged both the orders on three grounds.

(i) The report on the basis of which the notice to show cause was issued in Annexure-2 had not been supplied to the petitioner and, therefore, the petitioner could not submit proper explanation.

(ii) Though the order of the Collector shows that the petitioner was heard personally, the order of the appellate authority is clear to the effect that the petitioner had never been heard personally.

(iii) Though the petitioner was not found guilty of irregularities said to have been

committed in allegation No. 3 of Annexure-2 by the Collector, Bolangir, in absence of any appeal from the side of the Government, the appellate authority had no jurisdiction to decide the said allegation from which the petitioner had been exonerated.

5. So far as the first ground of challenge is concerned, it appears from the order impugned in Annexure-6 that some retailers of Deogaon submitted a petition to the Minister, Steel and Mines alleging irregularities in distribution of kerosene oil. The petitioner was forwarded by the Minister to the Collector, Bolangir and in turn the Collector, Bolangir directed the Marketing Inspector, Headquarters to conduct an inquiry and submit a report. The said Marketing Inspector conducted an inquiry on 21st November, 2000 and submitted the inquiry report on 11th December, 2000. In the report, he pointed out the irregularities alleged to have been committed by the petitioner, There is no dispute that a copy of the said report was never given to the petitioner. The learned Counsel for the State in this regard submitted that a preliminary inquiry had been conducted by the Marketing Inspector and on the basis of the report submitted by the Marketing Inspector, notice to show cause in Annexure-2 was issued. Since the grounds mentioned in Annexure-2 clearly stated the irregularities committed by the petitioner, serving a copy of the inquiry report would have been of no use for the purpose of filing reply. However, the learned Counsel for the State does not dispute that the copy of the inquiry report was not given to the petitioner before issuing notice to show cause to the petitioner or even thereafter.

6. So far as second ground is concerned, it appears that the Collector in Annexure-4 has stated that she heard the petitioner personally. From the order of the appellate authority, it appears that the petitioner was present at the time of hearing before the Collector, Bolangir, but she did not say anything. Therefore, in my view, it cannot be said that she had not been given an opportunity of hearing. If the petitioner was present at the time of hearing of the matter before the Collector, Bolangir and chose not to say anything, now she cannot say that she was not given an opportunity of personal hearing. I do not find any substance in this ground taken by the learned Counsel for the petitioner.

7. Coming to the third ground, which is most important, it appears that four types of irregularities were indicated in the notice to show cause in Annexure-2. The first allegation is that the petitioner was not running the business herself and had engaged one Smt. Renuka Patra as well as her brother Laxman Naik for the purpose. The second allegation is that she was not opening the sub-wholesale depot regularly and whenever the retailers wanted to lift the stock of kerosene oil, they used to send message to Smt. Renuka Patra for the purpose. The petitioner in her reply denied the allegation of engaging one Renuka Patra to run the business and she admitted that for certain period she had engaged her brother Laxman Naik to look after the business due to her pregnancy in the year 2000. The said Laxman Naik was entrusted to run the business under a registered power of attorney. On the face of these explanations, the Collector,

Bolangir only observed in the impugned order that the explanation submitted by the petitioner is not correct and as such she has contravened condition No. 4 of the Kerosene Oil Sub-wholesale Licence. From the order passed by the Collector in this regard, it can be safely said that the Collector has not assigned any reason whatsoever as to why the explanation of the petitioner was not acceptable. The appellate authority on the other hand, observed that Laxman Naik is barely a literate person and can hardly write his name. The power of attorney authorized him to supervise the accounts, put his signature, execute and endorse necessary papers, make correspondence with the C.S.O., handle chalans, drafts, cheques etc. and according to the appellate authority, the said Laxman Naik being an illiterate person could not have done all these official works and as such engagement of said Laxman Naik for the purpose of distribution of kerosene oil on behalf of the petitioner must have adversely affected supply of kerosene. The observation of the appellate authority in this regard appears to be only on the basis that the said Laxman Naik was illiterate. There is nothing on record to show that the accounts were being maintained by said Laxman Naik. For the purpose of distribution of kerosene oil to the retailers education may not be a serious requirement. Therefore, merely because the said Laxman Naik was an illiterate person as observed by the appellate authority, it cannot be said that he was incompetent to distribute the kerosene oil to the retailers. So far as maintenance of accounts is concerned, though some over writings had been found by the appellate authority at the time of hearing of the appeal, no finding has been arrived at as to how those over writings lead to a conclusion that less kerosene has been supplied to the retailers. The appellate authority however considering the over writings found that on one occasion Ramchandrapur Grama Panchayat was issued 1600 litres of kerosene oil instead of 1000 litres and signature of the Secretary of the Grama Panchayat was taken in respect of additional 600 litres of kerosene oil to create an impression that it was a clerical error in the register and that actual required kerosene oil had been issued to Ramchandrapur Grama Panchayat. The presumption of the appellate authority that one Sugriba Kharsel had been persuaded by the petitioner to put his signature against the issue of 600 kerosene oil to Ghasi Rana is based on no material and the said presumption of the appellate authority is without any basis. However, there may not be any dispute that some irregularities were found in maintenance of the accounts. The finding of the Collector that the petitioner was found to have issued the retailers 15 to 20 litres less in every barrel of kerosene oil has not been found favour with the appellate authority.

8. Under the circumstances, I am of the view that the irregularities pointed out in maintaining the accounts has not affected the supply of kerosene oil to the retailers and there is no material on record to hold that the irregularities pointed out in the accounts in any way affected distribution of kerosene oil among the retailers. In view of the above finding arrived at, the orders in Annexures-4 and 6 cannot be sustained.

The writ application is accordingly allowed and the orders in Annexures-4 and 6

are quashed.