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**(2008) 02 JH CK 0131**  
**In the Jharkhand High Court**

Syed Maniruddin and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

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**Date of Decision :** 06-02-2008

**Acts Referred:**

Essential Commodities Act, 1955 — Section 3

**Citation :** (2008) 2 JCR 697

**Hon'ble Judges :** Narendra Nath Tiwari, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

Narendra Nath Tiwari, J.—In this writ petition the petitioners have prayed for quashing the orders passed by the licensing authority-cum-S.D.O, Godda by his Memo Nos. 307. 308, 309. 311, 312, 313, 314, 315. 316 and 317 whereby the said respondent by one stroke of pen has cancelled the licences of the petitioners granted to them for sale of kerosene oil.

2. The petitioners had challenged the said cancellation order in W.P.(C) No. 3804/2006 and W.P.(C) No. 3807/2006. In view of the alternative remedy, this Court by order dated 7.9.2006 had directed the respondents to prefer revision before the Commissioner as the said orders of cancellation was passed on the direction of the Deputy Commissioner. The petitioner, thereafter, filed revision before the Commissioner and by order dated 26.3.2007 (Anne-xure-15), the Commissioner, Santhal Pargana Division, Dumka dismissed the petitioners" revision. The petitioners have also sought for quashing the said order dated 26.3.2007 (Annexure-15).

3. It has been stated that the petitioners were granted licence for distribution of kerosene oil as hawkers. The petitioners were doing their business as such and distributing kerosene oil at Godda town area which was the place of business mentioned in their licences. The petitioners were suddenly issued show cause notices by Memo No. 82 dated 17.2.2006. The show cause was composite and

addressed in the name of eleven licensed. It was alleged that on 7.2.2006 they were asked to go to Godda Hat for distribution of kerosene oil. The Supply Inspector proceeded to Godda Hat and waited there till 3.15 p.m., but the said vendors did not reach there. It appeared to the Supply Inspector that the petitioners were not willing to go to the Hat and distribute the kerosene oil among the general consumers so that they can illegally sell the kerosene oil in black market. On that basis, it was alleged that the petitioners have committed serious irregularity. They were asked as to why their licences be not cancelled for the said violation and Irregularity.

4. The petitioners were given three days" time for filing their reply. The petitioners submitted their reply within time denying the said allegation. It was stated that the vendors had started for the Hat, but on the way they were forcibly stopped by thousands of persons, due to which they could not reach Godda Hat till 3.30 p.m., to sell the kerosene oil according to the direction of the Supply Inspector. There was no fault or irregularity on their part and they are not liable for any action.

5. By the order dated 25.5.2006 as contained in Memo Nos. mentioned above, the petitioners" licences were cancelled alleging that they did not properly distribute the kerosene oil and violated the terms and conditions of their licences as also the provisions of the Bihar Trade Articles (Licences Unification) Order, 1984.

6. Against the said order the petitioners had filed writ petitions in W.P. Nos. 3804 and 3807/2006. The said petitions were disposed of directing the petitioners to file statutory revision before the Commissioner. The petitioners then preferred revision before the Commissioner, who by the impugned order dated 26.3.2007 (An-nexure-15) rejected the petitioners revision on the ground that they failed to obey the direction of the Supply Inspector to sell kerosene oil in Godda Hat and as such made themselves liable for cancellation and there is no merit in the revision petition.

7. Mr. Rajiv Ranjan, learned Counsel appearing on behalf of the petitioners, submitted that there was no violation of the terms of licence or any provision of the Bihar Trade Articles (Licences Unification) Order, 1984 by any act and commission of the petitioners. The petitioners had been selling kerosene oil as hawkers regularly in the town area as also in the Hats and other places, as orally directed by the Supply Inspector, though it was not a term of licence to act on oral instruction of the Supply Inspector. It has been submitted that there is a clear executive instruction of the Government that the hawkers cannot be forced to sell kerosene oil at a particular place vide Notification No. 3657 dated 19.9.1996. The licensing authority as well as the revisional authority have acted mechanically and without taking into consideration the provisions of law as also the terms and conditions of the licence of the petitioners and they have passed the orders contrary to the provisions of law which are not sustainable and are liable to be quashed.

8. A counter-affidavit has been filed on behalf of the respondents contesting the writ petition. It has been stated, inter alia, that the petitioners were bound by the executive instruction. They were directed to sell kerosene oil in Hat by the Supply Inspector in his presence. The Supply Inspector waited till 3.30 p.m., but they did not reach to Hat. The petitioners violated the executive instruction and made themselves liable for the consequences. The petitioners were given notice to show cause and after consideration of their reply, the impugned orders of cancellation have been passed by the licensing authority. There is no illegality or infirmity in the said orders nor there is any violation of the principles of natural justice and the petitioners have no ground to challenge the order. The petitioners had challenged the said orders before the Commissioner in revision. He also found the petitioners guilty of violating the instruction of the Supply Inspector and upheld the orders of the licensing authority. There is no illegality or arbitrariness in the said order of the Commissioner as well.

9. I have heard learned Counsel for the parties and perused the materials brought on record. It is admitted that the petitioners are the licensed hawkers and they had been granted licence of distribution of kerosene oil as hawkers. Clause 2(a) of the licence clearly mentions the place of licence as "Shahri Kshetra" i. e. Town area, Godda. There is no allegation that the petitioners had not sold or distributed the kerosene oil in the said area. According to the terms of the licence, they can move at any place within the area and they cannot be compelled to go out of the area or to sell kerosene oil at a particular place. The respondents have failed to produce any such executive instruction or Gazette Notification changing the place of licence of the petitioners. The terms of the licence as well as the provisions of Section 3(c) of the Essential Commodities Act provide for issuance of such instruction by the licensing authority or by the State Government by issuing Gazette Notification. No such instruction of the licensing authority or the State Government, issued by the Gazette Notification, has been produced by the respondents which was allegedly binding and violated by the petitioners, making them liable for cancellation of the licence. The order of the licensing authority as well as revisional authority being based on no cogent basis are perverse.

10. In view of the above, I find that the respondents have failed to bring any material on record to show that the petitioners have violated the terms of the licence or any statutory order or provisions of law. The impugned orders are, thus, arbitrary and wholly without jurisdiction and are not sustainable.

11. For the reasons aforesaid, the impugned orders of the licensing authority as contained in Annexure-12 series as also the order of the revisional authority (Annexure-15) are, hereby, quashed. This writ petition is allowed.