

(2014) 03 JH CK 0094
In the Jharkhand High Court
Case No : LPA No. 321 of 2013

The State of Jharkhand

APPELLANT

Vs

Champa Pathak

RESPONDENT

Date of Decision : 28-03-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g)
Hindu Marriage Act, 1955 — Section 13B
Special Marriage Act, 1954 — Section 27

Citation : (2014) 2 AJR 332 : (2014) 2 JLJR 484

Hon'ble Judges : R. Banumathi, C.J;S. Chandrashekhar, J

Bench : Division Bench

Advocate : Rajesh Kumar and Abhijeet Kumar Singh, Advocate for the Appellant; Binod Singh, Advocate for the Respondent

Final Decision : Allowed

Judgement

S. Chandrashekhar, J.—Writ petition was filed seeking quashing of order dated 11.7.2005 whereby licence No. 7/2005 pertaining to Retail fair price shop granted to the respondent was cancelled. A further prayer for quashing of order dated 17.8.2011 in E.C. Act Appeal No. 81R15/2005-06 passed by the Deputy Commissioner, Ranchi was also made. By the impugned order dated 5.12.2012 the writ petition was allowed and order dated 11.7.2005 issued by the Sub-Divisional Officer-cum-Licensing Authority, Ranchi and order dated 17.8.2011 passed by the Deputy Commissioner, Ranchi were quashed holding that the cancellation was wholly arbitrary, illegal and violative of Articles 14 and 19(1)(g) of the Constitution of India. Aggrieved, the State of Jharkhand has preferred the present Letters Patent Appeal. The brief facts of the case are that, on 11.5.2005 a licence bearing No. 7/2005 was issued in the name of the respondent and articles for distribution through the Retail fair price shop were allotted to the respondent. However, without issuing any show-cause notice and opportunity of hearing, the licence granted to the respondent was cancelled on. 11.7.2005 by the Sub-Divisional Officer-cum-Licensing Authority, Ranchi on the ground that

earlier a licence vide Licence No. 97/1984 was issued in the name of husband of the respondent. The respondent approached this Court in W.P.(C) No. 4603 of 2005 which was disposed of by order dated 16.11.2005 with an observation that the respondent would be at liberty to avail the alternative remedy of statutory appeal. Accordingly, the respondent filed E.C. Act Appeal No. 81R15/2005-06 before the Deputy Commissioner, Ranchi which was dismissed on 17.8.2011. In these facts, the respondent preferred W.P.(C) No. 6006 of 2011 which has been allowed by the impugned order dated 5.12.2012.

2. We have heard the learned counsel appearing for the parties and perused the documents on record.

3. Mr. Abhijeet Kumar Singh, learned counsel appearing for the appellant-State of Jharkhand has submitted that at the time when the Licence No. 7/2005 was issued to the respondent on 11.5.2005 admittedly, marriage of the respondent was subsisting. The matrimonial case being MTS-56/2010 was filed by the respondent seeking a decree of divorce much after the licence of the respondent was cancelled on 11.7.2005. It is submitted that in terms of the Government Notification more than one licence is not granted to the members of one family and since a licence in the name of the husband of the respondent was already issued vide Licence No. 97/1984, on 11.5.2005 erroneously another licence was issued in the name of the respondent which has rightly been cancelled on 11.7.2005. It is further submitted that a licence in the present case has been issued to the respondent under Bihar/Jharkhand Trade Articles (Licences Unification) Order, 1984 for the Jan Vitran Pranali Retail Shop for which food-grains and other items are supplied on subsidized price and thus, the licence was in the nature of privilege granted to the respondent and while so, the learned Single Judge erred in interfering with the order of cancellation dated 11.7.2005 on the ground of violation of the provisions under Articles 14 and 19(1)(g) of the Constitution of India. The learned counsel has further submitted that in so far as, the plea taken by the respondent that the licence has been cancelled without affording any opportunity of hearing to her is concerned, it has been cured at the appellate stage when the respondent preferred appeal before the Deputy Commissioner, Ranchi.

4. As against the above, Mr. Binod Singh, learned counsel appearing for the respondent has submitted that before the Writ Court the Circular relied upon by the appellants was not produced and therefore, the learned Single Judge has rightly observed that no provision of law has been shown under which the respondent, being wife of the licence holder can be deprived of the right to earn livelihood or carry on business in her name. It is submitted that even it is assumed that the respondent and her husband has been living together, the cancellation of licence of the respondent would be in the teeth of provisions under Articles 14 and 19(1)(g) of the Constitution of India and no reason has been disclosed by the appellant-State why the licence of the husband of the respondent was instead not cancelled. Relying on the provisions under Bihar/

Jharkhand Trade Articles (Licence Unification) Order, 1984, it is submitted that the licence once granted can be cancelled only on the ground of violation of the terms and conditions of the licence and on no other grounds. However, in the present case the licence granted to the respondent has been cancelled not on the ground of breach of terms and conditions of the licence and the order of cancellation has been passed without affording an opportunity of hearing to the respondent and without even issuing a show-cause notice to the respondent and therefore, the impugned orders have rightly been quashed by the learned Single Judge.

5. Having heard the learned counsel appearing for the parties and having appreciated the contentions raised by the learned counsel for the respective parties, we are of the view that the impugned order dated 5.12.2012 is liable to be interfered with by this Court. It is the contention of the respondent that the order of cancellation dated 11.7.2005 has been issued without issuing any show-cause notice or affording an opportunity of hearing to her. It is well settled that in all such cases in which an order is found not sustainable in law on the ground of violation of the principles of natural justice, normally the matter is remanded back to the authority for adjudicating the matter afresh after affording an opportunity of hearing to the person aggrieved. However, such a course has not been adopted by the learned Single Judge. Moreover, at the appellate stage the respondent has been granted adequate opportunity of hearing. It appears that an enquiry was conducted in the matter and an enquiry report dated 22.11.2010 was submitted whereunder it has been observed that it could not be ascertained whether the respondent is staying together with her husband or separately. The order dated 17.8.2011 passed by the Deputy Commissioner, Ranchi in E.C. Act Appeal No. 81R15/2005-06 also discloses that the Deputy Commissioner has also taken note of the fact that it could not be ascertained whether the respondent has been staying separately from her husband or not.

6. The learned counsel appearing for the respondent has submitted that since the respondent was deserted by her husband, therefore, she filed matrimonial case being MTS-56/2010 u/s 27 of the Special Marriage Act. However, subsequently a joint petition u/s 13B of the Hindu Marriage Act was filed and by order dated 4.9.2013 the marriage between the respondent and her husband namely, Srikant Pathak was dissolved and a decree of divorce by mutual consent u/s 13B of the Hindu Marriage Act was passed. It is submitted that even otherwise also the respondent was entitled for grant of licence and the order of cancellation dated 11.7.2005 was in violation of rights guaranteed to the citizens under Articles 14 and 19(1)(g) of the Constitution of India and therefore, learned Single Judge has rightly allowed the writ petition.

7. We find no merit in the contention of the learned counsel for the respondent. Admittedly, a licence was issued to the respondent under Bihar/Jharkhand Trade Articles (Licences Unification) Order, 1984. There are certain conditions for grant of licence and regulating the operation of the licence enumerated under Order,

1984. Part-III of Bihar/Jharkhand Trade Articles (Licences Unification) Order, 1984 deals with restrictions relating to prices and stocks etc. The learned counsel for the appellant-State has also relied on letter No. 8444 issued in the year, 1984 whereunder it has been mentioned that the fair price shops should not be in the name of the members of one family. It is also contended that after grant of licence for receiving food articles for distribution through fair price shops an agreement is executed between the licence holder and the appellant-Authority which entitles the holder of the licence to get food items and other articles at subsidised rates and it is thus, submitted that since it is a privilege offered to the licence holder, the appellant-State is at liberty to put restriction for grant of licence. We also find that since the grant of licence is regulated under the provisions of Bihar/Jharkhand Trade Articles (Licences Unification) Order, 1984, the learned Single Judge fell in error in holding that in view of Articles 14 and 19(1)(g) of the Constitution of India, the respondent-writ petitioner cannot be deprived of her right to carry on trade or business only on the ground that her husband also carries on the same trade or business. Moreover, the relevant provisions under Bihar/Jharkhand Trade Articles (Licences Unification) Order, 1984 was not challenged by the respondent before the Writ Court and therefore, there was occasion for the learned Single Judge to allow the writ petition on the aforesaid ground. The licence of the respondent was cancelled on 11.7.2005 and she filed a matrimonial case being MTS-56/2010 which was decreed by order dated 4.9.2013. Since the enquiry report dated 22.11.2010 and order dated 17.8.2011 in E.C. Act Appeal No. 81R15/2005-06 proceeded on the premise that it could not be ascertained whether the respondent and her husband were living separately or not, we are of the opinion that the matter is required to be remanded back to the Deputy Commissioner, Ranchi for passing a fresh order after holding enquiry in the matter. Accordingly, order dated 5.12.2012 in W.P.(C) No. 6006 of 2011 and order dated 17.8.2011 under E.C. Act Appeal No. 81R15/2005-06 are hereby set aside and the matter is remitted back to the Deputy Commissioner, Ranchi. In the result, this Letters Patent Appeal is allowed with the aforesaid direction.