

Sentu Dey Vs. The State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Oct-12-2017

Appellant : Sentu Dey

Respondent : The State of Jharkhand and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(C) No.3745 of 2016
----- Sentu Dey, Son of Late Atul Chandra Dey, resident of Harindanga Bazar, PO & PS- Pakur, District- Pakur. . Petitioner. -Versus- 1. The State of Jharkhand 2. The Additional Chief Medical Officer-cum- Designated Officer under Food, Safety and Standards Act, 2006 at Pakur, PO & PS- Pakur, District- Pakur.

3. The Medical Officer, In-charge, Primary Health Centre, Pakur-cum-Food Safety Officer, Pakur, PO & PS- Pakur, District- Pakur.

4. Ratan Chandra Dey, Son of Late Atul Chandra Dey, resident of Harindanga Bazar, PO & PS- Pakur, District- Pakur. ... Respondents. ----- CORAM : HONBLE MR. JUSTICE RAJESH SHANKAR ----- For the Petitioner : Mr. K. K. Ojha, Advocate For the State : J.C. to A.G. For Respondent No.4: Mr. Gautam Kumar, Advocate ----- 05/12.10.2017:

1. The present writ petition has been filed for quashing the order contained in Letter No.15 dated 19.01.2016 issued under the signature of Medical Officer-in-Charge -cum-Food Safety Officer, Primary Health Centre, Pakur (respondent

no.3), whereby the registration of the sweet shop of the petitioner has been cancelled and also the letter no.28 dated 02.05.2016 issued under the signature of Additional Chief Medical Officer-cum-Designated Officer, Pakur (respondent no.2), whereby the petitioner was informed that his shop has been sealed. The petitioner has also prayed for a direction upon the respondent authorities to unseal the shop of the petitioner forthwith.

2. The factual background of the case is that the father of the petitioner-Atul Chandra Dey had purchased a piece of land being Plot No.1943 area 7 Kattha 5 Dhurs under Mauza Pakur situated at Pakur Railway Station Road and opened a sweet shop namely Dhaka Misthan Bhandar. After the death of Atul Chandra Dey, the petitioner continued with the said sweet shop of his father known as Dhaka Misthan Bhandar upon his part of share. However, after the cancellation of the registration of the said shop, the petitioner got his sweet shop registered in the name of Bengoli Sweets vide -2- Registration No.-2-11-12-020-204-00041 dated 11.01.2016 issued by the Registering Officer/Food Safety Officer, Pakur. However, on the basis of the complaint made by the younger brother of the petitioner (respondent no.4 herein), the registration of the petitioner has been cancelled vide order contained in Letter No.15 dated 19.01.2016 issued under the signature of Medical Officer-in-Charge -cum-Food Safety Officer, Primary Health Centre, Pakur. Thereafter, the petitioner filed representation dated 18.04.2016 requesting the respondent no.3 to restore his registration by passing order for resuming his business but no heed was paid. Thereafter, letter no.28 dated 02.05.2016 was issued under the signature of the respondent no.2 by which the information regarding sealing of the business premises was given to the petitioner and accordingly the sweet shop of the petitioner was sealed.

3. The learned counsel appearing on behalf of the petitioner submits that the impugned order of cancellation of registration has been passed in violation of the principle of natural justice as the same has been passed without affording any opportunity of hearing. It is further submitted that the registration of the petitioner has been cancelled on the verbal complaint of the younger brother of the petitioner (Respondent No.4) is beyond the jurisdiction conferred under section 38 of the Food, Safety and Standard Act, 2006 (hereinafter to be referred as 'the Act,

2006'). It is further submitted that sealing of the shop of the petitioner has also been done against the provisions of section 32 of the Act, 2006 without serving improvement notice as well as providing opportunity to show cause and also without affirming the cancellation of the registration of the alleged shop of the petitioner granted to him vide Registration No.-2-11-12-020-204-00041. The learned counsel for the petitioner also submits that the respondents have wrongly alleged that the petitioner committed any fraud while taking the registration of the said shop. The petitioner had submitted the application for registration alongwith all the requisite documents, including treasury challan and the map of the plot -3- divided into four equal blocks and after making necessary enquiry and verification, the registration of the shop was granted.

4. The learned counsel appearing on behalf of the respondent nos.1 to 3 submits that one complaint was received from the brother of the petitioner namely Ratan Chandra Dey (Respondent No.4) with regard to the registration of the shop of the petitioner under the Act, 2006 and thereafter the registration was cancelled having found that the shop was running on the disputed land and some forged documents were attached with the application. When the premises of the petitioner was sealed, he made a compliant dated 16.05.2016 to cancel the license of his brother Ratan Chandra Dey as he was also running his shop in the same premises and, accordingly, the registration of his shop was also cancelled. It is further submitted that the registration of the shop was taken by the petitioner by producing forged documents and suppressing the fact that the shop is situated on disputed land and therefore the grant of registration has been cancelled by the Respondent No.3.

5. The learned counsel appearing on behalf of the Respondent No.4 submits that earlier the shop was being run by his father in the name of Dhaka Mistan Bhandar and after his death, the petitioner got the license renewed fraudulently in the name of his deceased father Atul Chandra Dey which continued till year 2013. The respondent no.4, having come to know about the said foul play, made a compliant before the concerned authorities and thereafter the registration in the name of their father was cancelled vide letter no.19 dated 24.09.2015. Thereafter, the petitioner applied for license in the name of M/s Bengoli Sweets keeping the respondent no.4 in dark and also got the registration on 11.01.2016 and when the answering

respondent came to know about the aforesaid registration, he raised objection before the authorities and finally the registration of the petitioner was cancelled on 19.01.2016 and the shop sealed on 02.05.2016. It is further submitted that the registration of the petitioner has rightly been cancelled as the same was issued on the false -4- representation as there was no agreement or consent of the other co-sharer for taking the registration. It is further submitted that the answering respondent had also got a fresh license for running Hotel namely Swastika Hotel and the license of the said hotel was also cancelled by the respondent authorities on the complaint of the petitioner for the similar reason.

6. Heard the learned counsel for the parties and perused the materials available on record. It is an admitted fact that initially a sweet shop was being run by the father of the petitioner and the respondent no.4 in the name of Dhaka Mithan Bhandar and subsequently after the death of his father, the petitioner got fresh registration of a sweet shop in the name of Bengoli Sweets but on the complaint of the Respondent No.4, the same was cancelled vide impugned order dated 19.01.2016 by the respondent no.3 on the ground that the registration was obtained on the disputed property without the consent of the other co-sharers. The question arises before this court is as to whether the respondent no.3 had any jurisdiction to cancel the license/registration of the petitioner's sweet shop on the ground that the property on which the registration was granted is a disputed one. The Act, 2006 has been enacted to consolidate the laws relating to food and to establish the Food Safety and Standards Authority of India for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto. The grant of registration to run food business has been provided under section 31 of the Act, 2006 which provides that no person shall commence or carry on food business except under a license which shall be granted in the manner provided in the regulation. The Food Safety and Standards (Licensing and Registration of Food Businesses) Regulation, 2011 (hereinafter called the Regulation, 2011) has been framed providing, inter alia, the manner of making application, grant of licence and also suspension and cancellation of -5- registration/license. On perusal of the Regulation, 2011, it would be evident that when an application is

filed for registration/license, the same is to be numbered and thereafter the Food Safety Officer or any other person or agency designated for such function is to inspect the premises in the manner prescribed by the Food Safety and Standard Authority of India and such Inspecting Officer or person may issue notice to the applicant to take necessary steps for change or alteration to be made in the premises in order to ensure general sanitation and hygienic condition as specified in Scheduled 4. After the receipt of the inspection report, the Licensing Authority would either grant license or reject the application after giving opportunity to the applicant. Clause 2.1.8 of the Regulation, 2011 provides for suspension or cancellation of registration certificate/ license after providing the business operator an opportunity to show cause if the food business operator has failed to comply the conditions mentioned in the improvement notice served under section 32 of the Act, 2006. The registration/license can also be cancelled or suspended forthwith in the interest of public health for reasons to be recorded in writing. However, the regulation does not provide that the license once granted, can be cancelled on some extraneous ground i.e. the business is being run on a disputed land. The registration of the petitioner was granted after due verification of the premises and it has not been mentioned in the impugned order that the petitioner violated any of the terms and conditions to be complied under the Act, 2006. Thus, the order of the respondent no.3 cancelling the registration/license and the letter of Respondent No.2 regarding sealing of sweets shop of the petitioner cannot be sustained in law.

7. Considering the aforesaid facts and circumstances, the letter No.15 dated 19th January, 2016 issued by the In-charge Medical Officer-cum-Food Safety Officer, Primary Health Centre, Pakur (Annexure-4 to the supplementary affidavit dated 21st July, 2016) and the letter no.28 dated 2nd May, 2016 issued by the Additional Chief Medical Officer-cum- -6- Designated Officer under Food, Safety and Standards Act, 2006, Pakur (part of Annexure- 3 to the writ petition) are hereby quashed and set aside. The Respondent No.2 is directed to take steps for unsealing the shop premises of the petitioner forthwith.

8. The writ petition is disposed of in view of the aforesaid observations and directions. However, Respondent No.4 is at liberty to ventilate his grievance before

appropriate forum in accordance with law.

9. I.A. No.3670 of 2017 also stands disposed of. (Rajesh Shankar, J.) Sanjay/AFR

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