

Ramesh Kumar Prasad Vs. The State of Jharkhand and Anr

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Court : Jharkhand

Decided On : Oct-31-2017

Appellant : Ramesh Kumar Prasad

Respondent : The State of Jharkhand and Anr

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (C) No. 7137 of 2016
Ramesh Kumar Prasad, son of Ramdeo Prasad, resident of Banta Nagar, Baba Ashram, AdityapurII, P.O. & P.S.Adityapur, District Seraikella Kharsawan ...
Petitioner Versus 1. The State of Jharkhand 2. SubDivisional Officer, Seraikella, P.O. & P.S.Seraikella, District Seraikella Kharsawan ... Respondents CORAM:
HON'BLE MR. JUSTICE RAJESH SHANKAR For the Petitioner : Mr. S.L. Agarwal, Advocate For the State : Mrs. C. Prabha, SCIV Mr. Vishal Kumar Rai, JC to SCIV Order No. 09 Dated: 31.10.2017 Heard the learned counsel for the parties. 2. The present writ petition has been filed for quashing the order contained in Memo No. 373 dated 07.10.2016 passed by the SubDivisional Officer, Seraikella (respondent no.2), whereby the petitioners Trade Licence No. 02 of 2002 issued under Clause 4 of Jharkhand Trade Articles (Licenses Unification) Order, 1984 (hereinafter referred to as Unification Order, 1984) has been cancelled on the grounds that the petitioners caste certificate was not issued in the State of Jharkhand and also he is not the resident of Jharkhand.

3. The factual background of the case as stated in the writ petition is that the petitioner was granted trade licence being Licence No. 02 of 2002 to run a fair

price shop. A showcause notice was issued to the petitioner by the respondent no. 2 alleging that in an inquiry constituted by the Deputy Commissioner, Seraikella Kharsawan in respect of PDS Shop of Rita Kumari, Ramesh Kumar Prasad (petitioner), Deb Prakash and Seema Swyam Sahayata Samuh, it was found that all these persons, who belonged to the same family, had been granted licence for running fair price shop in violation of relevant rules 2 and as such, all the four fair price shops are liable to be cancelled. The petitioner filed reply to the showcause on 18.07.2016, but the respondent no. 2 vide impugned order contained in Memo No. 373 dated 07.10.2006 cancelled the licence of the petitioner on the ground that the caste certificate of the petitioner has been issued from Uttar Pradesh and also on the ground that he is not the resident of the State of Jharkhand.

4. The learned counsel appearing on behalf of the petitioner submits that the licence once issued can only be cancelled on violation of the terms and conditions of the licence under Clause 10 of the Unification Order, 1984. It is further submitted that FormA appended to the Unification Order is the form prescribed for grant of licence and in the said form, neither there is provision for mentioning of the caste of the applicant nor it has been mentioned that the licensee must be the resident of Jharkhand. It is also submitted that before grant of licence to the petitioner, a thorough inquiry was made and only thereafter the licence was granted to him and as such, it can be cancelled only on the ground of violation of terms and conditions of the licence. The SubDivisional Officer, Seraikella, however, did not apply his mind and cancelled the licence of the petitioner only on the recommendation of a Committee constituted by the Deputy Commissioner. In support of his contention, the learned counsel for the petitioner puts reliance on the following judgments: (i) Md. Ehsan & Ors. Vs. State of Bihar & Ors. reported in 1999

(2) PLJR 621 (ii) Madhu Sudan Jha Vs. State of Jharkhand & Ors. reported in 2007

(3) JLJR 560

5. Per contra, the learned counsel for the respondentState submits that the petitioner and his other family members had managed to get the licence through

influence. It is further submitted that the petitioner is neither the resident of 3 Jharkhand nor his caste certificate has been issued from the State of Jharkhand. It is also submitted that the order of cancellation of licence was preceded by necessary enquiry and examination of the documents furnished by the petitioner. The petitioner cannot claim the absolute right to get the licence in violation of law and the Government policy.

6. Having heard the learned counsel for the parties and looking into relevant documents placed on record, it appears that the petitioner was granted licence for running fair price shop which has been cancelled on the ground that the caste certificate of the petitioner has been issued from Uttar Pradesh and also on the ground that he is not the resident of the State of Jharkhand.

7. In the case of Madhusudan Mahto Vs. State of Bihar reported in 2002

(1) JLJR 553, a single Bench of this Court in para 6 held as under:

6. It is therefore clear that the Licensing authority can suspend or cancel the licence of a licensee if he is found to have contravened any provision of this order or terms and conditions of the licence. Admittedly, licences of the petitioners have been cancelled on the ground of some guidelines issued by Department of Civil Supply, Govt. of Bihar, Patna. The Licensing Authority in his order has stated that in the interest of social justice and in accordance with principles of social equity, the guidelines was issued and on that ground licences have been cancelled. In my opinion, the action of the Licensing Authority is absolutely illegal and wholly without jurisdiction.

8. A Bench of Patna High Court (During unified Bihar), in the case of Md. Ehsan & Ors. Vs. State of Bihar & Ors. (supra), in para 7 held as under: 7. Coming now to the question of revocation of the petitioners' dealership under the Public Distribution System. In this regard it has been noted above that the only ground in which the dealerships have been revoked is that it was granted to the petitioners in violation of the condition as contained in the circular letter, dated 3.10.1980. In this case I am not required to 4 consider the validity of the condition as contained in the circular letter and assuming the condition to be legally valid, it has to be

examined whether the action of the respondent authorities is proper and reasonable. In this regard, it may be noted that there is no allegation that the petitioners obtained dealerships on the basis of any misrepresentation or suppression of fact or by any deceitful means. There is neither any allegation against the petitioners of any irregularity in the running of their respective fair price shops. Thus even assuming that the dealerships were granted to them overlooking the condition of residence can it be said that the action of the respondent authorities in revoking the dealerships after 17 or 18 years, invoking the condition of residence in the same Panchayat was fair reasonable and proper. In my considered view the answer would be in the negative. Even if the dealerships were granted due to oversight, that could not have been used as the ground for revocation of the dealerships after more than 17 or 18 years. 9. In the aforesaid case, the Court after taking into consideration that the dealership licence was not taken by any fraud or misrepresentation and also no allegation was levelled against the petitioner about any irregularity in running the fair price shop, came to the finding that even if it is assumed that the licence was given by overlooking the condition of residence, the same cannot be cancelled after about 17/18 years. In the present case also, no allegation has been levelled against the petitioner that he had committed fraud or misrepresentation while obtaining licence. It is also not the case of the respondents that the petitioner has violated the terms and condition of the licence. The assertion of the respondents that the petitioner used influence for obtaining licence cannot be accepted without any supporting evidence. Thus, the cancellation of licence after about 14 years cannot be said to be justified merely on the ground of caste certificate of the petitioner has not been issued in the State of Jharkhand. 10. In the case of Madhu Sudan Jha (Supra), a Bench 5 of this Court has held as under: 10. The Unification Order, 1984 has undergone various amendments time to time made by the Governor of Bihar. From bare reading of the aforesaid provisions of Unification Order, it is manifestly clear that the Licensing Authority has been vested with the powers to initiate a proceeding for cancellation of licence and after giving notice to show cause and opportunity of hearing, can pass order cancelling the licence of fair price shop. There is nothing in the Unification Order which empowers the Deputy Commissioner or any of the authorities to constitute a committee and take a

decision for cancellation of licence and such decision of the cancellation of licence by the Committee shall be communicated to the Licensee under the signature of the Sub Divisional Officer being the licensing authority. 11. As noticed above, the case of the respondents is that the Food, Civil Supply & Commerce Department issued guidelines regarding fair price shops by constituting a District Level Committee under the Chairmanship of Deputy Commissioner who will consider the case of grant, suspension and cancellation of fair price shop licences. From perusal of the guidelines (annexure F to the counter affidavit), it is clear that this was issued by the Secretary, Food & Civil Supply, Government of Jharkhand. This guideline is nothing but an executive instruction 12. It is well settled that executive instruction or administrative orders cannot be issued in contravention of statutory rules, but could be issued to supplement them. The Unification Order, 1984 has been made in exercise of powers conferred by Section 3 of the Essential Commodities act and the Order has got the statutory force. 17. As noticed above, the Bihar Trade Articles (Licences Unification) Order, 1984 lays down a procedure for the grant, suspension, renewal or cancellation of licence. For the purpose of cancellation of licences, the Licensing Authority has to comply the mandatory requirement of Clause 11 of the Order. In other words, no order of cancellation shall be passed by the Licensing Authority unless the Licensee has been given reasonable opportunity to put his case against the proposed cancellation. Contrary to this statutory provision, the Food & Civil Supply Department issued executive instruction/guidelines conferring powers to the committee constituted under the said guidelines. The said guidelines, inter alia, provide that henceforth the matter relating to grant of licence, renewal, suspension or cancellation of licence, shall be considered first by the Committee and the recommendation of the committee shall be sent to the Department for approval or disapproval. The procedure provided in the said guidelines is wholly unconstitutional and in conflict with the statutory provisions contained in the Unification Order. Such guideline is, therefore, liable to be struck down.

11. In the aforesaid case, it has been held that the power of cancellation and suspension of license has been given to the Licensing Authority, who has to comply the mandatory requirement of Clause 11 of the Unification Order, 1984 and such power cannot be vested to any Committee by any executive instructions

or administrative orders. Executive instructions or administrative orders cannot be issued in contravention of statutory rules, rather the same can only be issued to supplement the rules.

12. In the present case, the SubDivisional Officer proceeded on the basis of an enquiry report submitted pursuant to the direction of the Deputy Commissioner, Seraikella and although, the showcause notice was issued to the petitioner, the impugned order was passed without taking into consideration the reply of the petitioner. Otherwise also, the learned counsel appearing on behalf of the Staterespondent failed to show any relevant rule which makes it mandatory to mention the caste of the applicant at the time of filing the application for getting licence in the statutory FormA. Though, it is pleaded by the respondentState in the counteraffidavit that the PDS licence was issued to the petitioner in violation of the Government Policy, yet no such policy has been brought on record by the respondents. Even if the said policy by way of executive Instructions stipulates 7 some provision which goes contrary to the provisions of the Unification Order, 1984, the same shall have no legal sanctity. Once the licence has been granted after following due procedure, the same can only be cancelled on violation of the terms and conditions of licence stipulated in Clause 10 after following the procedure prescribed under Clause 11 of the Unification Order, 1984 and not otherwise. 13. Considering the aforesaid discussions, the writ petition is allowed. The impugned order as contained in Memo No. 373 dated 07.10.2016 passed by the SubDivisional Officer, Seraikella (respondent no. 2) is hereby quashed and setaside. (Rajesh Shankar, J.) Manish/A.F.R.

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