

Umesh Kumar Vs. State of Bihar and ors.

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Court : Patna

Decided On : May-05-2000

Judge : S.N. Jha, J.

Appeal No. : C.W.J.C. No. 6422 of 1999

Appellant : Umesh Kumar

Respondent : State of Bihar and ors.

Disposition : Appeal Dismissed

Judgement :

S.N. Jha, J.

1. This writ petition is directed against the order of the sub-divisional Officer, Buxar dated 11.6.99 cancelling the licence with respect to a shop under the Public Distribution System. The order has been passed in the light of the decision of the State Government contained in letter of the Additional Secretary, Food, Supplies and Commerce Department vide letter No. 4571 dated 21.8.92. The State Government, it appears, has taken a policy decision not to grant more than one licence under the Public Distribution System to members of the same family and where it has been already granted to cancel the same.

2. Shri N.K. Agrawal submitted that issue is settled by decision of this Court in Md. Mumtaj v. State of Bihar C.W.J.C. No. 2492 of 1997(R), reported in 1999 EFR 746. He also relied on Lal Babu Prasad v. State of Bihar 1989 PLJR 125.

3. The decision in Md. Mumtaj v. State of Bihar (supra), is of no help to the petitioner. The decision was rendered while considering the validity of the policy decision not to grant licence to a person who is not resident of the Panchayat or ward where the shop is situate. Copy of letter dated 8.10.80 communicating the policy decision has been enclosed with the counter-affidavit as Annexure-A. It appears that in continuation of earlier decision on the point as contained in Food & Supply Department's letter No. 2735 dated 23.3.79, the State Government took a decision not to grant licence in three situations-where the conduct of the person is suspicious or where any member of his family has already been granted licence under the Public Distribution System or if he is not resident of the same Panchayat or ward. The submission of the Counsel was that the circular has been struck down as a whole and therefore, the ground that the members of the same family cannot be granted more than one licence must be held to have become non est. The submission is wholly misconceived. The letter mentioned three separate grounds and the validity of only one of them was under consideration. The question as to whether another member of the same family could be allowed licence under the Public Distribution System was not in issue in that case. The point, therefore, has to be considered-as one of first impression.

4. At the outset, the distinction between the so-called licence under the Public Distribution System and a general trade licence must be pointed out. Under Clause 3 of the Bihar Trade Articles (Licences Unification) Order, 1984, no person can any on business of purchase, sale or storage for sale of any of the scheduled trade articles except under and in accordance with the terms and conditions of a licence issued in that behalf by the licensing authority under the provisions of the said Control Order. This is a general provision applicable to all types of business of purchase, sale or storage for sale of any scheduled article. A person appointed as 'dealer' under the Public Distribution System also, therefore, cannot carry on such business without licence issued under the said Control Order. However, he can do such business under the Public Distribution System only if he has been

granted dealership by the authority concerned of the State Government. Though this is also loosely called licence, Bihar Trade Articles (Licences Unification) Order does not envisage any such licence. As a matter of fact, there is no special provision with respect to the business of purchase, sale or storage for sale under the Public Distribution System in the said Control Order. The dealership or licence', so loosely called, is granted under the general administrative Circulars and instructions of the State Government. The logical corollary of the distinction is that even though the dealership or the so-called licence under the Public Distribution System is cancelled the person concerned may carry on the business of purchase, sale or storage for sale of the trade articles provided there is no other restriction and the licence issued under the Control Order itself has not been cancelled on the ground of violation of any terms and conditions of the licence. In the present case, as noted above, what has been cancelled is the dealership or the licence' under the Public Distribution System and not the general trade licence issued under the Control Order. The decision in Lal Babu Prasad v. State of Bihar (supra), related to the case of cancellation of the trade licence under the Control Order and not the dealership under the Public Distribution System, and is, therefore, of no help to the petitioner.

5. Coming to the question as to whether on the ground that one of the members of the family has already been granted dealership or licence under the Public Distribution System, another member of the family can be denied similar licence. No person can claim any legal right to dealership under the Public Distribution System. Article 19(1)(g) of the Constitution guarantees fundamental right of trade or business but nobody can claim dealership or licence under the Public Distribution System, as a concomitant of the fundamental right under Article 19(1)(g). The person may still carry on business of purchase, sale or storage for sale of trade articles in chiding scheduled articles subject to any restriction laid down with respect thereto by any law.

6. The grant of dealership under the Public Distribution System is in the nature of grant of privilege and though the Government is expected to act fairly and reasonably in making the grant, it is entitled to impose restrictions and lay down the conditions for making the grant. Article 39 of the Constitution lays clown the

principles which the State is required to follow in framing its policy and one of the principles is that the operation of the economic system should not result in concentration of wealth. In other words, there should be distribution of wealth as far as possible. The policy not to grant dealership to more than one or more in the same family, in my opinion, is in accordance with the aforesaid Directive-Principle and may not, therefore, be said to be illegal or arbitrary. Even Clause (6) of Article 19 empowers the State to impose, in the interest of general public, reasonable restrictions on the exercise of the right of trade or business. In these premises, the impugned order of cancellation of dealership/licence under the Public Distribution System cannot be said to be erroneous.

7. In the result, I do not find any merit in this writ petition which is accordingly dismissed.

8. It is, however, clarified that the impugned order would not prevent the petitioner from otherwise carrying on trade or business on the basis of the trade licence issued to him under the Bihar Trade Articles (Licences Unification) Order 1984 in accordance with law.

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