

Deep Narayan Singh Vs. District Administration

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Court : Jharkhand

Decided On : Sep-14-2016

Appellant : Deep Narayan Singh

Respondent : District Administration

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (C) No. 6167 of 2012
--- Deep Narayan Singh --- --- --- Petitioner Versus 1. The State of Jharkhand 2.
The Deputy Commissioner, Godda 3. The Sub Divisional Officer, Godda 4. The
District Supply Officer, Godda 5. The Block Supply Officer - cum - Supply
Inspector, Block- Godda, District - Godda --- --- --- Respondents --- CORAM:The
Honble Mr. Justice Aparesh Kumar Singh For the Petitioner: Mr. Purnendu Kr.
Jha, Advocate For the Resp - State: Mr. Dhananjay Kr. Dubey, Sr. SC-1 --- 05/
14.09.2016 Heard counsel for the parties.

2. Petitioner's PDS licence 7/88 was cancelled initially by order dated 30.12.2004
bearing memo no. 754 passed by the Sub Divisional Officer, Godda (Annexure-2)
on the grounds of irregularity in the operation of PDS shop at Gram Panchayat
Pathra Block Godda District Godda.

3. Allegations made were that there is serious discontent among the consumers;
petitioner has been living in his house constructed at Sarkanda; PDS is not
opened on regular basis; distribution of PDS items / kerosene oil, etc is being done
on irregular basis. Allegations have been made of charging PDS items on higher

price from the consumers; on physical inspection, PDS items were found in excess than what was reflected in the store register such as kerosene oil and rice, while wheat was found in lesser quantity. The order of cancellation at Annexure-2 dated 30.12.2004 was however quashed by the learned Single Judge of this Court in WPC No. 1013/2005 vide judgment dated 02.03.2005 (Annexure-2/1) on the grounds that no show-cause or opportunity of hearing was given to the petitioner. However, liberty was reserved to the Respondent to proceed afresh in accordance with law. By Annexure-2/2 order dated 07.04.2005, PDS licence was restored.

4. Petitioner came before this Court again with a grievance in WPC No. 5307/2005 that despite restoration of PDS licence, no allotment of the provision of the food grains is being issued. That writ petition was disposed of by order dated 08.12.2005 to enable the Sub Divisional Officer, Godda to pass appropriate orders 2. on his representation (Annexure-3). Thereafter, the PDS licence of the petitioner has been cancelled by an order bearing memo no. 47 dated 31.01.2006 issued by the Sub Divisional Officer, Godda on the basis of a decision taken by the District Level Committee in its meeting held on 21.01.2006. By the impugned decision, PDS licence of six other persons were also cancelled.

5. Petitioner came before this Court again in WPC No. 4461/2006 which however was dismissed as withdrawn giving him liberty to approach the Appellate Authority by order dated 21.11.2006 (Annexure-5). The Appellate Authority by the impugned order at Annexure-6 dated 26.04.2012 has upheld the order of cancellation.

6. Counsel for the petitioner has assailed the impugned orders on the following grounds: Relying upon the judgment passed in the case of Ram Kishore Prasad Sah vs. The State of Jharkhand & others in WPC No. 1167/2006 dated 04.08.2009 (Annexure-5/1), it is submitted that cancellation of PDS licence of the said petitioner by the common impugned order (Annexure-4) has been set aside by this Court on the grounds that District Level Committee did not have the jurisdiction to issue direction for cancellation of PDS licence in teeth of Bihar Trade Articles (Licence Unification) Order, 1984 whereunder, it is only the Licensing Authority which is SDO in this case who is empowered to pass an order of cancellation of such licences. Petitioner therefore stands on similar footing. Order has also been

assailed on the same ground that when the foundation of the impugned decision crumbles due to lack of jurisdiction upon District Level Committee, the Appellate Authority has wrongly proceeded to uphold the same and that too without application of mind. It is submitted that the allegations made against the petitioner in relation to irregularity or irregular functioning of PDS shop are motivated by the vested interest in the locality where his PDS shop is situate.

7. Learned counsel for the State Mr. Dhananjay Kr. Dubey has defended the 3. impugned order and also relied upon the contents of the counter affidavit. He submits that complaints have been made by a number of persons to the Deputy Commissioner, Godda in respect of irregularity and irregular functioning of the shop of the petitioner and another person. The Supply Inspector - cum - Block Supply Officer, Godda inspected the fair price shop of the petitioner on 30.12.2004 and found the allegations true in the matter of distribution of PDS items and irregular opening of the fair price shop, which led to cancellation of licence by the order of the same date issued by the Sub Divisional Officer, Godda (Annexure-2). After cancellation order was quashed by this Court in WPC No. 1013/2005, petitioner was served with show-cause notice. It is only upon consideration of his reply, which was not found to be satisfactory, that the order of cancellation has been passed against him by the impugned order at Annexure-4 and upheld in appeal by the Deputy Commissioner, Godda (Annexure-6). Learned counsel for the Respondent State has however not dispelled the submission of the counsel for the petitioner based upon the judgment rendered by the learned Single Judge of this Court in the case of Ram Kishore Prasad Sah (Supra), on the question of lack of jurisdiction of District Level Committee to issue direction for cancellation of PDS licence of the said shop. He however submits that in the present case, petitioner's grievances were considered by the Appellate Authority in appeal and only on being satisfied with the materials on record including the submissions made by the counsel for the appellant and Government Pleader, the order of cancellation has been upheld as it did not suffer from any infirmity. This Court therefore, should not interfere in the matter under Article 226 of the Constitution of India.

8. Having considered the submissions of the parties in the light of the relevant materials facts noticed herein-above, this Court is inclined to take a view that the

impugned decision suffers on following counts. The original order at Annexure-4 besides being non-speaking, has been issued on the decision of the District Level Committee in its meeting held on 4. 21.01.2006 which has been held by the Learned Single Judge of this Court in the case of Ram Kishore Prasad Sah (Supra) as being without jurisdiction. It is the Licensing Authority under Bihar Trade Articles (Licences Unification) Order, 1984 who is authorized to pass orders on the question of cancellation of PDS licence. Learned Single Judge held vide judgment dated 04.08.2009 (Annexure-5/1) that the statutory order, 1984 has not been superceded by any other statutory order. Administrative instructions therefore cannot supercede the same. It has been held that the Licensing Authority will take care of the job entrusted to it under 1984 statutory order while the remaining matters, not covered by the statutory order, may be examined by the District Level Committee.

9. In appeal, apart from the aforesaid ground striking on the root of the original order, the Appellate Authority also does not seem to have addressed itself on the merits of the matter and the conclusion drawn by him are non-speaking and cryptic. The Appellate authority after recording the allegations made against the petitioner and submissions of the parties, has straightaway proceeded to hold that the impugned order is lawful and justified and does not suffer from any infirmity on the basis of available records. It therefore does not address to the reply of the petitioner on the allegations made to arrive at a finding as to the correctness or otherwise of the allegations made. The appeal in more than one sense being a continuation of the original proceeding, the Appellate Authority was equally obliged to examine the case on merits and arrive at its finding on the correctness or otherwise of the allegations made. In that way, neither the Original Order nor Appellate order discloses the application of mind and reasons for cancellation. In that sense, the decision making process has suffered. This Court under powers of judicial review has been precluded from testing the impugned orders as neither the Original Order, nor the Appellate Order discloses any reasons.

10. In view of the aforesaid discussions and reasons recorded, orders impugned cannot be upheld in the eye of law and are accordingly quashed. However, 5. Respondents are at liberty to take a fresh decision in the matter, in accordance

with law, after due opportunity to the petitioner.

11. Writ petition is accordingly allowed. (Aparesh Kumar Singh, J) Ranjeet/

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