

Baban Sharma Vs. the State of Bihar and ors

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Court : Patna

Decided On : May-12-2012

Appellant : Baban Sharma

Respondent : The State of Bihar and ors

Judgement :

IN THE HIGH COURT OF JUDICATURE AT PATNA Civil Writ Jurisdiction Case No.10487 of 2007 Baban Sharma son of late Awadh Singh, resident of village Serthua, Gram Panchayat Chiri, P.S. Hulasganj, District Jehanabad.. Petitioner Versus 1. The State Of Bihar, 2. The Collector, Jehanabad, 3. The S.D.O., Jehanabad, 4. A.D.S.O., Jehanabad, Respondents. For the PetitionerL Mr. Vijay Anand, Advocate For the State: Mr. Anjani Kumar Sharan, SC 9 AC to SC 9

12. 01.2012 Heard learned counsel for the petitioner and the State. Petitioner is aggrieved by the order dated 09.06.2000 passed by the Sub-divisional Officer, Jehanabad-cum-licensing authority, respondent no. 3 as contained in Annexure 2, whereby and whereunder petitioners licence no. 32/85 granted under the provisions of the Bihar Trade Articles (Licences Unification) Order, 1984 (hereinafter to be referred to as the Unification Order) for retail dealership has been cancelled as well as the order dated 31.10.2006 passed by the Collector, Jehanabad (respondent no.

2) in Supply Appeal No. 18/DM/2006-07, whereby and whereunder the appeal preferred by the petitioner has been dismissed. 2 On 01.06.2000 petitioners licence was suspended by the Additional District Supply Officer, Sadar,

Jehanabad and a notice was issued to him to show- cause as to why his licence should not be cancelled, however, the petitioner did not file any show-cause and by the impugned order dated 09.06.2000 petitioners licence was cancelled. Learned counsel for the petitioner raises a short question at the time of hearing of this case that though the order of cancellation has been passed by the concerned Sub-divisional Officer being a licensing authority but the show-cause notice initiating the proceeding for cancellation of licence had been issued by the Additional District Supply Officer who was not the licensing authority under the provisions of the Unification Order. It is submitted that the aforesaid irregularity would vitiate the entire proceeding including the final order which has been passed by the licensing authority. The petitioner had preferred an appeal also against the final order passed by the licensing authority, however, the same has also been dismissed by the Collector, Jehanabad (respondent no.

2) by the order dated 31.10.2006 passed in Supply Appeal 3 No. 18/DM/2006-07 in which he has referred to a criminal case having been instituted against the petitioner under section 7 of the Essential Commodities Act (hereinafter to be referred to as the Act). Though the appellate authority has taken notice that the petitioner has been discharged by the court of law in the aforesaid case but the licence has not been revived. It is submitted that the appellate authority has held that the acquittal is limited to the charges that were framed against the petitioner under section 7 of the Act and there is no direction of the trial court to revive the cancelled licence. The petitioner has appended the judgment of the trial court whereby the petitioner has been acquitted of the charges under section 7 of the Act (Annexure 4). Learned counsel for the petitioner has placed reliance upon a decision dated 07.05.2001 passed by this Court in C.W.J.C. No. 4837 of 2001, (Annexure 3) in support of his submissions. It is contended that this Court following a decision of the Division Bench of this Court in Om Narain Prasad v. State of Bihar and others (AIR 198.Patna,

266) and another order dated 10.11.1998 passed in C.W.J.C. No. 4993 of 1997 has held that the initiation of the proceeding being 4 without jurisdiction would vitiate the final order in the proceeding. The relevant passages of the order are reproduced as under: Mr. N.K. Agrawal, learned Senior counsel appearing for the

petitioner assailed on a short and simple point. Learned counsel submitted that though the order of cancellation was passed by the Sub divisional Officer being the licensing authority, the show cause notice initiating the cancellation proceeding was issued by the Addl. Dist. Supply Officer who was not the licensing authority of the retail licence under the Unification Order. Thus, the initiation of the proceeding was itself without jurisdiction and that irregularity had vitiated the final orders passed in that proceeding.. In support of his submission, learned Counsel relied upon a bench decision of the Court in Om Narain Prasad v. State of Bihar and others (AIR 198.Patna, 266). It appears that following the aforesaid Division Bench decision in Om Narain Prasad, several orders have been passed by the court in similar circumstance. One such order, dated 10.11.1998 passed in C.W.J.C. No. 4993 of 1997 was also produced before me. The point urged on behalf of the petitioner, thus, seems to have substance and is fit to be accepted. Though a counter affidavit has been filed on behalf of the State but learned counsel for the State was not in a position to show that even in view of the aforesaid irregularity, the impugned orders can be sustained. 5 Thus, in the opinion of this Court, the point urged on behalf of the petitioner seems to have substance and is fit to be accepted and there would be no difficulty in holding that the initiation of proceeding having been initiated by the Additional District Supply Officer was without jurisdiction and that would vitiate the entire proceeding including the orders passed by the licensing authority as well as the appellate authority. In above view of the matter and also in view of the fact that the petitioner has already been acquitted of the charges framed under section 7 of the Act, this writ application is allowed, the order impugned dated 09.06.2000 passed by the Sub-divisional Officer, Jehanabad-cum- licensing authority, respondent no. 3 as contained in Annexure 2, and that dated 31.10.2006 passed by the Collector, respondent no. 3 are set aside. The respondent authority is directed to restore the licence of the petitioner. However, there would be no order as to costs. SC (Dr. Ravi Ranjan, J.)