

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.C. No.893 of 2013

Basant Kumar Singh	Petitioner
Versus		
The State of Jharkhand & others	Respondents

CORAM: HON'BLE MR. JUSTICE APARESH KUMAR SINGH

For the Petitioner : Mr. A.K.Sahani
For the Respondents :J.C. to Sr.SC-II

02/31.07.2013 Heard counsel for the parties.

The grievance of the petitioner is that by an order dated 1.2.2012 contained in memo no. 01(Annexure-5) the Licensing Authority cum Sub-Divisional Officer, Dhanbad has cancelled the P.D.S. License of the petitioner bearing License No. 5/Ch/90.

It is contended on behalf of the petitioner is that by a vague show cause notice issued on 14.10.2011, allegedly based upon the inspection carried out on 27.8.2011 by a team constituted by the Deputy Commissioner, Dhanbad the license of the petitioner was placed under suspension and he was asked to file reply. Learned counsel for the petitioner submits that no details of the alleged complaints of the cardholders of the female category of Scheduled Caste and Scheduled Tribe members and those belonging to weaker section were furnished to him, who alleged to have made complaints. The second allegation relating to improper distribution of APL food articles amongst card holders was also not substantiated and neither was the allegation relating to the black marketing. In respect of charge no. 3 relating to distribution of Kerosene Oil also no details of any such inspection report were furnished and it was straightway alleged that thumb impression of 95% of the card holders were similar and no entries were made in the distribution register. It was also alleged that petitioner failed to produce other register and cash memo on being asked.

Learned counsel for the petitioner submitted that the contents of the inquiry report, which appears to have been the basis for issuance of the show cause notice and the impugned order (Annexure-5) were never furnished to the petitioner. It is further submitted that in the absence of the proper show cause notice containing necessary details, petitioner could not furnish specific reply to the allegations. However, vide Annexure-2 he has furnished

his reply to the show cause by stating that no cardholders of the P.D.S shop of the petitioner were inquired by the inspecting team and no details of such cardholders were also furnished. Therefore, the allegations are concocted. After 13.5.2011 when he had last distributed the food articles, though he deposited the draft in the local office of Jharkhand State Food Corporation but no food articles were issued to him for the next 6 months. Therefore, there is no question of any black marketing. It is further submitted that the inspecting team never asked for any documents or register from the petitioner though he was present in the shop. The allegations relating to the alleged distribution of the Kerosene Oil to the beneficiaries has also not been substantiated by any material. Learned counsel for the petitioner also submitted that even the Chairman of the Nagar Panchayat, Chirkunda had informed the S.D.O., Dhanbad vide Annexure-3 dated 24.10.2011 that there are no complaints of any cardholders in respect of the P.D.S shop of the petitioner. Even the Ward Commissioner of Ward No. 13 has informed the S.D.O, Dhanbad that no complaints has been received from the cardholders in respect of petitioner's P.D.S shop vide Annexure-4. In such circumstances, the impugned order has been passed in a mechanical manner on the basis of some inquiry conducted behind the back of the petitioner and the show cause notice is also vague which has prevented the petitioner from furnishing adequate defence in his support. Therefore, the impugned order is bad in law and needs to be set aside. Learned counsel for the petitioner has relied upon a judgment rendered by learned Single Judge of this Court in the case of ***M/S Jay bee Enterprises, Bariatu, Ranchi Vrs. Jharkhand State Electricity Board & others*** reported in **2011(2) JLJR 295**. He has submitted that the P.D.S control order, 2001 has also not been made effective by the State till now which has been taken note of by the learned Single Judge in the said case.

Learned counsel for the respondent- State has submitted that petitioner has been issued show cause notice on the basis of inspection carried out by a team constituted by the Deputy Commissioner, Dhanbad. He

was found to have committed various irregularities which were in contravention of clause 3(ka) sub sections 1,2,3,4 and 11 of the provisions of the License Act/Rule. It is further submitted that during the course of inquiry from the card holders it was noticed that although 2 litres of Kerosene Oil was distributed amongst the cardholders per month for which earlier Rs. 26/- was being paid but for the last 3 to 4 months petitioner was realizing Rs. 30/- as the cost of 2 litres. It is further stated in the counter affidavit that in the inquiry report it is clear that on verification of stock and sale register of Kerosene Oil, it was noticed that petitioner had lifted 1000 litres on 3.8.2011, 400 litres on 23.8.2011 and 265 litres on 28.8.2011. Thereafter, the distribution register shows that average distribution was amongst 150 cardholders per day. On the date of inquiry i.e. 27.8.2011 the closing stock was written as 'nil'. Therefore, the allegation of the petitioner that he was not asked to produce any evidence is not correct. Such manner of distribution was found to be not proper by the inquiry committee and, therefore, he was issued show cause notice. After consideration of his reply, it was found unsatisfactory and accordingly, his PDS license was cancelled.

I have heard counsel for the parties at some length and gone through the relevant materials on record. On perusal of Annexure-1 notice itself it appears that it has been issued on the basis of inquiry conducted by the inspecting team constituted by the Deputy Commissioner, Dhanbad on 27.8.2011. However the charges at serial no. 1 to 3 did not contain any details of the complaint made by the cardholders of SC/ST Female category or other weaker sections. No details relating to the alleged distribution of APL food articles were evident from the show cause. In respect of distribution of the Kerosene Oil, though the charge is vague but in the counter affidavit at para 7 various details have been shown, which apparently were contained in the inquiry report. However, the said inquiry report was not served upon the petitioner in order to furnish adequate defence in his support. In fact in his reply the petitioner has stated that after distribution of the food articles on 13.5.2011 though he had deposited bank draft in the local office of

Jharkhand State Food Corporation but no such food articles were produced for the next 6 months, therefore the question of black marketing of the same did not arise. In fact the statement made in para 7 of the counter affidavit shows that the inquiry team had taken into account the issuance of Kerosene Oil of 265 litres on 28.8.2011, as found by the inquiry team but the inquiry itself was stated to have been conducted on 27.8.2011 i.e. one day before that. In such circumstances, therefore, it appears that the decision making process has suffered for non-furnishing of copy of the inquiry report which formed the basis of the show cause notice to the petitioner, which itself is vague. Petitioner, therefore, could not furnish adequate reply to the same and in such circumstance, the impugned order of cancellation of the PDS license of the petitioner appears to suffer from non application of mind and also on account of lack of proper opportunity to the petitioner.

In such circumstances, the impugned order dated 1.2.2012 passed by the S.D.O. cum Licensing Authority, Dhanbad cannot be sustained in law as well as on facts and is accordingly, quashed. However, it would be open for the respondents to issue fresh show cause notice upon the petitioner, if they so choose containing specific details of the charges and the inquiry report which they rely before proceeding to take any action.

The writ petition is allowed in the aforesaid terms.

(Aparesh Kumar Singh, J.)