

(2008) 03 JH CK 0017

Jharkhand High Court

Case No: None

Ganga Prasad

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

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**Date of Decision:** March 27, 2008**Acts Referred:**

- Essential Commodities Act, 1955 - Section 7

**Citation:** (2008) 3 JCR 131**Hon'ble Judges:** Narendra Nath Tiwari, J**Bench:** Single Bench**Final Decision:** Allowed

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### Judgement

@JUDGMENTTAG-ORDER

N.N. Tiwari, J.

In this writ petition, the petitioner has prayed for quashing the order dated 23.11.2003 passed by S.D.O., Ramgarh cancelling the petitioner's license by non-speaking order. He has further prayed for quashing the order dated 13.9.2005 passed by the Deputy Commissioner in Misc. Appeal No. 16/2005 as also the order dated 24.4.2007 passed by the Commissioner, North Chotanagpur, Hazaribagh in PDS Revision No. 35 of 2006, whereby the said appellate and revisional authorities have upheld the order of the S.D.O, dismissing the petitioner's appeal and revision.

2. According to the petitioner, he was granted Fair Price Shop License being No. 1/03. He had been running the said shop properly. He never violated any terms of the licence or any provision of law. However, a case was lodged u/s 7 of the Essential Commodities Act being Ramgarh P.S. Case No. 196/03 alleging that some articles were found in a godown said to be run by his brother-in-law, namely, Raj Kishore Saw. Thereafter, a show cause notice was issued to the petitioner by the Sub-Divisional Officer, Ramgarh, Hazaribagh asking the petitioner as to why the petitioner's licence should not be cancelled. By the said order, petitioner's licence

was also suspended on the said ground. The petitioner filed his reply stating, inter alia, that the godown, which was searched and from which the materials were seized, does not belong to him and he has got no concern with the same at all. The petitioner is neither owner nor he is a tenant of the said godown. The petitioner has further submitted that no irregularity has been committed by him and he has not violated any term of the licence or the provision of law and his PDS shop can be inspected and truth can be elicited. The petitioner, thus, prayed for revocation of the order of suspension of his licence.

3. The grievance of the petitioner is that after the said reply, no further notice was given to him. Suddenly, by order dated 23.11.2003, the petitioner's licence was cancelled by the order mentioning therein that in spite of service of notice, the petitioner did not turn up and his reply to the show cause is unsatisfactory. The petitioner, thereafter, filed appeal before the Deputy Commissioner, Hazaribagh, which was registered as Misc. Appeal No. 16/05. The Deputy Commissioner also did not consider the grounds taken in appeal and upheld the order of the Sub-Divisional Officer without considering that there was no allegation of violation of any term of licence by the petitioner and that the godown, which was searched and seized, does not belong to the petitioner. The petitioner, thereafter, preferred a revision before the Commissioner, North Chotanagpur Division, Hazaribagh, which was registered as PDS Revision No. 35/06. Learned Commissioner also did not consider the grounds taken by the petitioner as also the facts and materials available on record and dismissed the revision petition at the admission stage itself.

4. Learned counsel for the petitioner submitted that from the impugned order, it is evident that there is no allegation of violation of any term of licence granted to the petitioner nor there is allegation of violation of any provision of law against him. The only ground on the basis of which the petitioner's licence has been cancelled is the FIR lodged in Ramgarh P.S. Case No. 196/06. Only allegation made in the FIR is that on enquiry, the Circle Inspector-Informant came to know that a godown was used by the petitioner's brother-in-law, Raj Kishore Saw. It was alleged that from the said godown, six gallon (50-50 Ltrs each) Kerosene Oil found loaded on Tempo. There is no allegation that the said Kerosene Oil was of PDS shop of the petitioner or he had got any concern with the said godown from where the alleged seizure was made. In the reply to the show cause, the petitioner has categorically denied to have any connection or concern with the said godown. There was no contrary material on record to hold that the petitioner has got any connection with the said godown. Only on the basis of the said allegation that the petitioner, who was operating the godown, happens to be the brother-in-law, this licence has been cancelled, which cannot be a ground of cancellation of petitioner's licence. Learned counsel urged that the orders passed by the Licensing Authority as also by the appellate and revisional authorities are mechanical and non-speaking and the same have been passed without any application of mind and the same are illegal and are unsustainable.

5. The petitioner's writ petition has been contested by the State-respondents. In their counter affidavit, it has been stated, inter alia, that the petitioner was made a co-accused in Ramgarh P.S. Case No. 196/03, which is still pending. The notices were issued to the petitioner, but he got the same returned on the pretext that he was not available at the residence. There was, thus, no option before the Licensing Authority as well as appellate and revisional authorities but to hold that the petitioner had no defence to contest the case.

6. I have heard learned Counsel for the parties and considered the facts and materials appearing on record as also the provision of law.

7. It is an admitted fact that the petitioner's licence has been cancelled only on the allegation that the petitioner was made a co-accused in Ramgarh P.S. Case No. 196/03. Another ground on which the petitioner's licence has been cancelled is that notices were sent to the petitioner, but he got the same returned on the pretext that he was not available at the residence. Licensing Authority has also observed that the petitioner's reply to the first show cause was not satisfactory.

8. On perusal of the FIR. I find that the petitioner is not named in the FIR. The allegation is that on enquiry, the informant came to know that the godown from which six gallon (50-50 Ltrs. Each) Kerosene Oil was recovered was being used by the petitioner's brother-in-law, Raj Kishore Saw. In the FIR, there is no allegation that any article of the PDS shop of the petitioner was seized from the said godown. There is no allegation of any violation of the term of licence or any provision of law by the petitioner. In the impugned order, Licensing Authority has not even mentioned about the said criminal case, rather it has been mentioned that the petitioner was asked to show cause on the allegation that he had indulged in black marketing. The petitioner's reply to that was not satisfactory.

9. The petitioner was given several notices thereafter, but he managed to return the same pretending that he was not available at residence. He, thus, deliberately avoided to file his subsequent reply.

10. On close scrutiny of the order, I do not find any ground alleging violation of any term of licence or any provision of law for cancellation of petitioner's license. From the reply to the show cause, it is evident that he has categorically denied to have violated any term of licence or the provision of law and has also categorically denied to have any concern with the godown from which the Kerosene Oil was allegedly seized. The order of the Licensing Authority is non-speaking and there is nothing in the order to show that the petitioner's reply to the show cause has been considered. The impugned order is non-speaking and mechanical and apparently appears to be passed without any application of mind. The same is, thus, wholly arbitrary, illegal and unsustainable. The orders passed by the appellate as well as revisional authorities dismissing the petitioner's appeal and upholding the said order of Licensing Authority are mechanical and illegal. Neither the appellate

authority nor the revisional authority has considered the ground taken by the petitioner. The said appellate and revisional orders too are, thus, unsustainable in law.

11. In view of the above, this writ petition is allowed. The order of the Licensing Authority, appellate authority as well as revisional authority, as contained in Annexures-4, 5 and 6 are set aside.