

(2012) 07 JH CK 0125

Jharkhand High Court

Case No: Writ Petition (C) No. 846 of 2012

Virendra Kumar Roy

APPELLANT

Vs

The State of Jharkhand and
Others

RESPONDENT

Date of Decision: July 4, 2012

Hon'ble Judges: Narendra Nath Tiwari, J

Bench: Single Bench

Advocate: A. K. Sahani, for the Appellant;

Final Decision: Allowed

Judgement

Narendra Nath Tiwari

1. The petitioner has prayed for quashing the order of the Sub Divisional Officer-cum-Licensing Authority, Sadar, Ranchi dated 3rd January, 2012 (Annexure-7), whereby the said respondent has cancelled the petitioner's licence granted under Public Distribution System. The short ground, which has been taken for assailing the impugned order, is that the order of cancellation of the petitioner's licence has been passed without issuing any show cause notice and without giving any opportunity of representation/hearing to the petitioner.

2. Learned counsel for the petitioner submitted that the petitioner's licence has been cancelled by the impugned order on certain allegations by way of penalty, but the said allegations were never communicated to the petitioner; no notice or opportunity of hearing was given to him. The impugned order has been passed arbitrarily, illegally and in blatant violation of principle of natural justice. Learned counsel submitted that Rule 11 of the Bihar Trade Articles (Licenses and Unification) Order, 1984 provides for giving notice and opportunity to the licensee before passing an order of cancellation by the Licensing Authority. The said Rule has been violated and no notice or opportunity was given to the petitioner before passing the order of cancellation of petitioner's licence. The said order is also violative of

principle of natural justice, as no order visiting a person with civil consequence can be passed without giving him proper opportunity of representation/hearing. The impugned order is, thus, nonest in law and is liable to be quashed by this Court.

3. The respondents have contested the writ petition by filing counter affidavit. It has been stated, inter alia, that show cause notice was issued to the petitioner and his reply was considered, but the same was found unsatisfactory and as such the petitioner's licence was cancelled. It has been submitted that earlier also petitioner's licence was cancelled by the Licensing Authority, but the Appellate Authority had set aside the said order, giving warning to the petitioner that in case any irregularity is found on the part of the petitioner in future, his licence shall be cancelled. Learned counsel appearing on behalf of the respondents submitted that there is no illegality or arbitrariness on the part of the respondents. The petitioner was given notice; he had filed his reply, but was not found satisfactory; and the licence was cancelled in view of the irregularity committed by the petitioner.

4. I have heard learned counsel for the parties and perused the facts and materials on record. On perusal of the impugned order dated 3rd January, 2012, I find that nothing has been mentioned regarding issuance of any notice and filing reply by the petitioner. There is no discussion of explanation made in the reply. In the order, it is only alleged that there was dissatisfaction among the card holders and the public representatives against the petitioner.

5. The impugned order does not show compliance of Rule 11 or compliance of principle of natural justice. It is cryptic and mechanical and there is nothing in the order to read that any notice was issued to the petitioner and he had filed his reply and that the Licensing Authority had applied his mind on the reply filed by the petitioner.

6. Learned counsel for the respondents submitted that notice was given to the petitioner and he had filed his reply, which was found unsatisfactory, clear statement to that regard has been made in the counter affidavit.

7. It is well settled that the compliance of the requirement of principle of natural justice must appear from the order. It cannot be supplemented by making statement in the counter affidavit.

8. I find substance in the contention and submission of learned counsel for the petitioner that the prescribed Rule as well as the principle of natural justice have been violated and no opportunity was given to the petitioner before passing the impugned order of cancellation of his licence. For the reasons aforesaid, the impugned order dated 3rd January, 2012, contained in Annexure-7, is quashed. This writ petition is allowed.