

Dalchand Chittar Mal vs Commr., Food And Civil Supplies And Ors. on 27 August, 1951

Equivalent citations: AIR1952ALL61, AIR 1952 ALLAHABAD 61

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Bench: V. Bhargava

JUDGMENT

V. Bhargava, J.

1. This is an application by a firm Messrs Dalchand Chittar Mal of Aligarh for the issue of writs and directions under Article 326 of the Constitution for quashing the order passed by the opposite parties cancelling the petitioners' appointment as District Importer at Aligarh and for directing the opposite parties to grant to the petitioners all permits and facilities to which they are entitled under the license in form B, issued under the U. P. Controlled Cotton, Cloth and Yarn Dealers' Licensing Order, 1948. It is the admitted case of both the parties that the petitioners were holders of a license in form B, issued by the District Magistrate of Aligarh in their favour. The petitioners alleged that they had some differences with one Shri P. C. Sharma, Secretary, City Congress Committee, Hathras and influenced by Shri P. C. Sharma the opposite parties had passed an order terminating the petitioners' appointment as Importer for Aligarh District. This cancellation amounted to a cancellation of the license issued in form B and was against the provisions of the U. P. Controlled Cotton & Yarn Dealers' Licensing Order, 1948, because the order was passed without recording the reasons for passing it in writing as required by the aforesaid Order. These facts, which were given on behalf of the petitioners in an affidavit, have not been controverted by the opposite parties at all, and we have, therefore, to accept them as correct. We must, therefore, proceed on the finding that the petitioners were holders of a license in form B and that suddenly and without any warning the petitioners were informed by opposite party no. 3 on 17-6-1961 that the Government had been pleased to terminate their appointment as individual importer for ex-U. P. goods for district Aligarh with immediate effect. When this information was received by the petitioners, they made a representation to the Government. In reply to this representation, the petitioners received an intimation from the Commissioner Food & Civil Supplies, U. P. Government, stating, "with reference to their application dated 31-5-1961, regarding Cloth importership Messrs Dalchand Ohittar-mal are hereby informed that the Government have deemed it desirable to terminate their appointment as cloth importer."

It has been alleged by the petitioners that as a result of these orders of the Government, the petitioners cannot be granted permits under which they could receive their quota of cloth, although

they still hold a license valid up to the 30th September, 1951, which had not been expressly cancelled. It is contended that an order of cancellation of a license is a quasi-judicial order and is open to scrutiny by this Court when exercising its power under Article 226 of the Constitution. In this particular case the opposite parties passed the order cancelling the appointment without complying with the provisions of Clause 12 of the U. P. Controlled Cotton, Cloth & Yarn Dealers' Licensing Order, 1948, and therefore, it should be quashed so that the petitioners may be able to exercise their right under the valid license which had been issued to them.

2. The learned counsel for the opposite parties has contended that the order communicated to the petitioners on the 17th May, 1961, was not a quasi-judicial order at all but an executive order terminating the appointment of the petitioners as individual importer. This order did not purport to cancel the license issued in form B, and cannot, therefore, be deemed to be an order under Clause 12 of the Licensing Order mentioned above. This argument has not found favour with us at all. The method of appointment of a District Importer is not laid down anywhere in the various orders dealing with controlled cotton, cloth and yarn except that there is a mention of the capacity as a district importer informs itself. The Form B is entitled :

"License to buy controlled cotton cloth/cotton yarn as a district importer from manufacturers in mill packed bales and sell in mill-packed bales or split bales/bundles."

Apart from the use of 'district importer' in this license, this term has not been used in any other provision of the Controlled Cotton, Cloth & Yarn Dealers' Licensing Order, 1948 or in any other order passed either by the Central Government or the State Government relating to controlled cotton, cloth and yarn. The use of the words "license to buy controlled cotton cloth/cotton yarn as a district importer" in the form of the license obviously, therefore, indicates that the issue of the license itself amounts to the appointment of the licensee as a district importer. Had this license not been sufficient to create such an appointment, there would have been other provisions for making such an appointment. In the absence of any other such provisions, we must hold that the issue of this license automatically confers on the licensee the status of a district importer and consequently when a license in form B was issued to the petitioners, they were, by the act of the issue of that license, appointed as district importer for district Aligarh. This appointment as a district importer by issue of the license was obviously made by the District Magistrate in exercise of his powers under Clause (6) of the Licensing Order. The license once issued under Clause (6) could only be cancelled in accordance with the provisions of Clause 12. In the present case the Government have passed an order which, though not worded as cancellation of the license; has the effect of cancelling the license, because the issue of a license in form B has the effect of making an appointment of a district importer and the cancellation of an appointment as district importer would have the effect of cancelling the license. The order challenged before us is, therefore, an order which the Government could have passed under Clause 12 of the Licensing Order only. Normally the powers of cancelling a license is exercised by the licensing authority but under Clause (3) of the Licensing Order the State Government could also exercise all the powers which are exercisable by the licensing authority. The State Government was, therefore, competent to issue an order cancelling the license of the petitioners under Clause 12 of the Licensing Order and when an order has been passed by the

Government which has the effect of cancelling the license, we must deem that order to be an order under Clause 12 aforesaid. The order which has been quoted above clearly shows that, though the license was cancelled, the reasons for cancellation of the license were not recorded by the Government. The learned counsel for the opposite parties has contended that though this order may be deemed to be an order under Clause 13 passed by the State Government, which could exercise all the powers of a licensing authorities due to Clause (3) of the Licensing Order, the State Government should not, at the same time, be held to be bound by the limitations which are placed on the exercise of its powers by the licensing authority in Clause 12. We cannot accept this argument because when Clause (3) conferred the power on the State Government to exercise all the powers of a licensing authority, it obviously meant that that power was to be exercised by the State Government subject to the same limitations to which and the manner in which it could be exercised by the licensing authority. The exercise of power by one authority which has been conferred on another authority necessarily implies that the exercise of the powers by both must be subject to exactly similar limitations. Consequently the State Government in this case when passing an order which had the effect of cancelling the license of the petitioners was bound to record its reasons in writing as required by Clause 12 and this not having been done, the order is clearly not in compliance with law and is liable to be set aside. We could not and we have not gone into the question whether the reasons for the cancellation of the license are such as would justify our holding that this order is in compliance with Clause 12 of the Licensing Order, because the reasons are not before us and cannot be scrutinised by us. The absence of the record of reasons in the order is itself sufficient to justify its being quashed.

3. In addition to the prayer for quashing this order there is another prayer by the petitioners for a direction to the opposite parties to grant to the petitioners permits and facilities to which they are entitled under the license in form B. In the affidavit before us, it has not been disclosed that the opposite parties have in any way refused any permits or facilities to the petitioners to which they are entitled. After the illegal order terminating the appointment of the petitioners as importer, which has the effect of the cancellation of the license, is set aside, it is obvious that the petitioner would be entitled to exercise all their rights in the license and ask for permits and facilities to which they are entitled and which we need not investigate. No further directions, therefore, appear to be necessary, except an order quashing the termination of the appointment of the petitioners as district importer. We, therefore, quash the order of the Government by which the appointment of the petitioners as individual importer ex- U.P. goods for Aligarh was terminated and which was communicated to the petitioners by opposite party No. 3 on the 11th May, 1951. Since the main prayer of the petitioners is being allowed, they will be entitled to their costs from the opposite parties which we fix at Rs. 200.