

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22670 of 2013

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Fair Price Dealers Association, Betwan Bazar, Munger, P.S.- Kasim Bazar,
District- Munger through its Chairman, Chandra Prakash Prasad, Son of Late
Raghunandan Prasad, Resident of Shadipur P.S.- Kotwali District- Munger

.... Petitioner

Versus

1. The State of Bihar through The Chief Secretary, Government of Bihar, Old Secretariat, Patna
2. The Principal Secretary, Food And Consumer Protection Department, Government of Bihar, Old Secretariat, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Sushmita Mishra, Adv.

For the Respondent/s : Shri Lalit Kishore(P.AAG)

Mr. Ranjeet Kumar, AC to P.AAG

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 05-05-2015

The petitioner is the association of fair price shop dealers of Munger district in the State of Bihar. It challenges the Public Distribution System Control Amendment Order, 2011 (for short the Amendment) as *ultra vires* the Articles-14, 19(1)(g) and 21 of the Constitution of India apart from being contrary to the provisions of Essential Commodities Act (for short, the Act). Through the said order, the Government of Bihar amended the Fair Price Shop Order, 2007 which, in turn, was issued under



the Public Distribution System Control Order, 2001 issued by the Government of India. The Act provides for the various measures to regulate the supply and distribution of the essential commodities in the country. Power is conferred upon the Central Government to issue control orders for this purpose. Once such order was issued in 2001 in relation to the Public Distribution System. That order, in turn, enabled the Governments of the respective States to frame their schemes or to issue control orders with the same features, by furnishing details. For providing guidelines in this behalf, appendix was also added.

The Government of Bihar issued Fair Price Shop Order, 2007. That contained certain guidelines to be followed in the context of granting licenses to the fair price shop dealers. Through the impugned order, certain Clauses are added. Important among them are those which prohibited the individuals from being granted fair price shop licenses. Other Clauses provided for the appointment of the dependant of a deceased fair price shop dealer, in case he died after attaining 55 years of age, and removing any holidays for the fair price shops. The petitioner challenged all the three clauses referred to above as being unreasonable, arbitrary and violative of various provisions of Constitution of India. Apart from that, the Control Order is challenged on the ground that it was effected without the prior consent of the Central Government.



The plea of the State, was that the amendment was made only to enforce the clauses contained in the Central Government Control Order of the year 2001 as amended in the year 2004 and no independent exercise of power was undertaken. It was also pleaded that by raising similar grounds C.W.J.C. No.15157/11 and batch was filed before this Court and they were partly allowed by setting aside the clause that disabled the individuals from being granted license and the remaining two clauses were upheld.

Heard Sushmita Mishra, learned counsel for the petitioner, and Shri Lalit Kishore, learned Principal Additional Advocate General and Mr. Ranjeet Kumar, learned counsel for the respondents.

The aspect which is purely legal in nature is about the prior concurrence of the Central Government. The basis for this plea is that Section-3 of the Act empowers the Central Government alone to pass control orders and since the present control order was passed by the State Government, the concurrence of Central Government was necessary. It is also urged that in the 2007 Order, specific mention was made about the concurrence of the Central Government, whereas similar mention is not made in the impugned amendment.

In answer to this, it is urged on behalf of the State Government that the 2001 Control Order or the present amendment are issued only in the light of the 2001 Central

Control Order and, in that view of the matter, the necessity of prior consent does not arise. It is stated that the word “concurrence” mentioned in the 2007 Order is reflective of the Control Order being in conformity with the Central Control Order, 2001.

It is, no doubt, true that Section-3 of the Act empowers the Central Government alone to issue Control Orders and, if any State Government intends to issue Control Order, the concurrence of the Central Government is necessary. In the instant case, however, the entire exercise was only to supplement details and to implement the Central Control Order of 2001. A perusal of the said Control Order discloses that elaborate provisions were made to enable the State Governments to come forward with their own schemes or control orders. Appendix-5 which is almost in the form of guidelines if followed in this context, was made part of the Control Order. Clauses-5 and 7 of the Appendix make copious reference to the nature of steps that are required to be taken by the Government. Therefore, the impugned amendment cannot be said to be an independent exercise that warrants the concurrence of the Central Government. We do not agree with the contention of the learned counsel in this regard.

Coming to the validity of the 3 clauses, the gist of which is mentioned in preceding paragraphs, the first part of it has already been declared to be ‘not valid’ by a Division Bench of

this Court in its judgment in C.W.J.C. No.15157/11 and batch.
We follow the same and extend the same relief to the petitioners.
As regards the remaining 2 clauses, the Division Bench refused to interfere and we do not find any basis to take a different view.

Therefore, the writ petition is partly allowed setting aside the Clause-2.4 of the Public Distribution System Control Amendment Order, 2011. As regards the other two Clauses, the writ petition is dismissed.

Interlocutory application, if any, stands disposed of.

There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

(Sudhir Singh, J)

K.C.jha/-
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