

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1312 of 2015

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1. Ramji Mandal Son of Prayag Mandal resident of village - Samour
Dhanushi, P.O. Gandhwari, P.S. Sakri, District - Madhubani

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Madhubani
3. The Sub Divisional officer, Sadar, Madhubani
4. Block Supply officer, Harlakhi and Madhepur Block, District Madhubani

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sachchida Nand Lal Karan, Adv.

For the Respondent/s : Mr. Harish Kumar, GP-32

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

3 06-07-2015 Learned counsel is permitted to make appropriate corrections in name of the respondent No.3 during the course of the day.

Heard learned counsel for the parties.

The petitioner is a holder of licence granted under the provisions of the Public Distribution System Control Order as enforced vide Fair Price Shop Order, 2007 (hereinafter referred to as 'the Control Order) being Licence No. 1 of 1991. The petitioner by way of this writ petition has questioned the licence cancellation order passed by the Licensing Authority-cum-Sub Divisional Officer, Madhubani dated 16.3.2009 placed at Annexure-5, the order passed by the appellate authority in Appeal No. 167 of 2009-

10 dated 3.11.2009/5.1.2010 placed at Annexure-6 and the order passed by the Commissioner dated 12.2.2013 in Revision Case No. 58 of 2012 placed at Annexure-1 of I.A.No.5270 of 2015.

Facts of the matter briefly stated is that following the allegations set out against the petitioner, his licence was suspended by the licensing authority vide order bearing Memo No.32 dated 14.1.2008 placed at Annexure-1. Since at the relevant time the maximum period for suspension of licence was only 90 days hence the petitioner made a prayer for revocation of suspension and which was duly recommended by the licensing authority but the recommendation was rejected by the District Level Selection Committee under the Chairmanship of the District Magistrate, Madhubani vide order passed on 5.1.2009 and following which the licence of the petitioner was cancelled vide order bearing No.122 dated 16.1.2009 placed at Annexure-5 and which order has been affirmed by the appellate authority as well as the revisional authority vide orders impugned at Annexure-6 to the writ petition and Annexure-1 to the I.A. No. 5270 of 2015. The petitioner being aggrieved is before this Court.

Relying upon a Division Bench judgment of this Court rendered in the case of **Shiv Chandra Jha Vs. Harideo Jha** reported in 2013(3)PLJR 959 learned counsel submits that for

the same set of allegations the petitioner can not be subjected to the penalty of suspension as well as termination of licence. He submits that the records of the proceedings itself suggest that the suspension of the licence of the petitioner as well as its cancellation are founded on the same set of allegations.

I have heard the parties and perused the records.

In the circumstances existing in the present case where the issue raised by the petitioner stands covered under a decision of this Court reported in **2013(3)PLJR 956 (Shiv Chandra Jha Vs. Harideo Jha)**, this Court does not deem it necessary to await filing of a counter affidavit merely to complete the formality.

There is no dispute that the cancellation order passed by the licensing authority placed at Annexure-5 is for the same set of allegations for which the license of the petitioner stood suspended and the recommendation for its revocation was returned with rejection following which the cancellation order has been passed. There being thus no contest that the foundation for passing the suspension order as well as the cancellation rests on the same set of allegation, the order of cancellation of licence passed by the licensing authority impugned at Annexure 5 as affirmed by the appellate authority as well as revisional authority vide orders placed at Annexure-6 and Annexure-1 to the interlocutory

application are apparently in the teeth of the Division Bench Judgment rendered in the case of Shiv Chandra Jha(supra) and thus unsustainable.

For the reasons aforementioned the order of cancellation impugned at Annexure-5, the order passed by the appellate authority impugned at Annexure-6 and the order of revisional authority at Annexure-1 to the I.A. No.5270 of 2015 is set aside. The licence of the petitioner is restored.

The writ petition is allowed. The interlocutory application is disposed of.

(Jyoti Saran, J)

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