

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4300 of 2014

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Dharamdew Chaudhary, S/O Late Brahamdev Chaudhary, resident of Village-Kadir Bigha, P.S. Deepnagar, District – Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
2. The Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
3. The District Magistrate -cum- Collector, Nalanda at Biharsharif.
4. The Sub-Divisional Officer, Biharsharif, Nalanda.
5. The District Supply Officer, Nalanda.
6. The Marketing Officer, Biharsharif, Urban Area, District – Nalanda.
7. The Block Supply Officer, Biharsharif, District – Nalanda.
8. The Supply Inspector, Laheri, District – Nalanda.

.... Respondent/s

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Appearance :

For the Petitioner/s : Ms. Vagisha Pragya Vacaknavi
Mr. Binod Kumar Singh

For the Respondent/s : Mr. Sanjay Kumar Singh, AC to GA-4

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 10-02-2015

Heard learned counsel for the parties.

The petitioner is a licensee under the Public Distribution System (Control) Order, 2001 as enforced in the State of Bihar vide Bihar Fair Price Shop Order, 2007 (hereinafter referred to as ‘the Control Order’). The licence of the petitioner bearing No.63 of 2007 was sought to be cancelled by issuance of a show cause notice by the Licensing Authority –cum- Sub-Divisional Officer, Biharsharif, district- Nalanda bearing No.1542 dated 7.9.2011 a copy of which is placed at Annexure-5 to the writ



petition, whereby the petitioner was granted three days' time to respond thereto. Admittedly no reply was filed. The Licensing Authority vide order bearing Memo no.1589 dated 16.9.2011 cancelled the licence of the petitioner. Being aggrieved the petitioner filed statutory appeal before the District Magistrate, Nalanda bearing Supply Case No.10 of 2012 and the District Magistrate, Nalanda vide order dated 23.7.2013 has dismissed the appeal and confirmed the order of the Licensing Authority and being aggrieved the petitioner is before this Court.

Ms. Vagisha Pragya Vacaknavi, learned counsel appearing on behalf of the petitioner has referred to the allegations as mentioned in the show cause notice to submit that although the petitioner is charged with black-marketing upon recovery of four drums of blue kerosene oil which the petitioner is stated to have lifted from the wholesaler on 30.8.2011, i.e. from the date of seizure but there is complete absence of evidence supporting the allegation. She further submits that the statutory authorities were influenced by the previous show cause notices which finds mention in the show cause notice issued in the present case and which reflects that the proceeding has been conducted in a premeditated manner. She further submits that whereas the Licensing Authority has misdirected himself in relying upon Public Distribution System



(Control) Order 2011, even when no such order is in force, the Collector as an appellate authority has gone a step further to cancel the licence of the petitioner for alleged violation of the Bihar Trade Articles (Licenses Unification) Order, 1984 (hereinafter referred to as 'the Unification Order') and which reflects the manner in which the proceedings have been conducted. It is further her submission that a mere allegation would not be sufficient to constitute a charge of black marketing and a mere pendency of criminal case would also not be sufficient for any such action.

Learned counsel for the petitioner in support of her submission that 'the Unification Order' cannot be relied upon for cancellation of licence at its present stage when the Control Order, 2001 stands enforced in the State of Bihar with effect from 20.2.2007 and Clause 1 thereof specifically rules out the applicability of 'the Unification Order', has relied upon a judgment of this Court reported in **2012(1) PLJR 790 (Jag Narayan Prasad vs. The State of Bihar)**. Learned counsel in support of her submission that a mere registration of criminal case is not sufficient for cancellation of licence, has relied upon a Bench decision of this Court reported in **AIR 2014 Patna 113 (Umesh Ram vs. The State of Bihar)** and in support of her submission that a mere recovery of the goods from any other place in absence of any evidence would

not be sufficient for any such action, has relied upon a decision of this Court reported **2010(3) PLJR 17 (Ramchandra Prasad vs. The State of Bihar)**.

The arguments of learned counsel have been contested by Mr. Sanjay Kumar Singh, learned Assisting Counsel to Government Advocate No.4. With reference to the FIR which was instituted against the petitioner and against the person from whose residence the recovery was made present at Annexure-4 to the writ petition, he submits that the seized goods itself reflect that the person was engaged in acts of black-marketing. He submits that the matter is pending consideration before the criminal court and since no possible explanation was given by the petitioner as to the circumstances reflecting it would not be necessary to interfere with the orders impugned in the proceedings.

I have heard learned counsel for the parties and I have perused the materials on record.

Except that four drums of blue kerosene oil was recovered from the premises of one Pappu Kumar, there is no other material on record to suggest that the petitioner was in collusion with the said Pappu Kumar and engaged in acts of black-marketing. No doubt a criminal case has been instituted against the petitioner and said Pappu Kumar on the self same charge but the matter is

pending consideration before the criminal court.

The Control Order, 2001 was enforced in the State of Bihar vide notification dated 20.2.2007. The order as it was originally enforced in its paragraph 7(3) did provide that the licence of a dealer would be kept under suspension pending outcome of a criminal case but the said provision was deleted under the amendment dated 23.6.2011 and thus there is no such provision which enables the statutory authority to take any action against the dealers on a mere institution of a criminal case. On the contrary clause 14 of the Fair Price Shop Order, 2007 specifically provides that a licence of a dealer can be cancelled consequent upon conviction.

Admittedly the criminal case is pending consideration before the court below and the charge of black-marketing whatsoever is yet to be established. Moreover, the period of three days granted by the Licensing Authority to the petitioner to respond to the charges was too minimum for any one to reply to the charges and even if it is given a go bye, yet the petitioner did furnish explanation before the appellate authority i.e. the Collector, Nalanda as to the circumstances in which the drums were found in the premises of Pappu Kumar. The explanation afforded by the petitioner ought to have been dealt with by the appellate authority



even for the purpose of rejection. The order passed by the appellate authority does not even deal with the explanation extended by the petitioner. It is not in dispute that the criminal case as well as the cancellation of licence has taken place on mere recovery of four drums of blue kerosene oil from the premises of one Pappu Kumar with no supporting evidences available connecting the petitioner to be in collusion with the said Pappu Kumar in acts of black-marketing.

Another blunder committed by the appellate authority i.e. the Collector, Nalanda in the present case is, that even when 'the Unification Order' has been declared inapplicable by virtue of enforcement of the Fair Price Shop Order, 2007 in the State of Bihar, he yet relies upon 'the Unification Order' for exercise of his appellate powers.

The Collector, Nalanda performing statutory functions is expected to be conversant with statute under which he is exercising powers. The fact remains that the orders impugned are based on no evidence and the criminal case is pending adjudication. In case the criminal case goes against the petitioner, then the Licensing Authority would be within its powers to pass appropriate order under Clause 14 of the Bihar Fair Price Shop Order, 2007 but until such time, a mere recovery of the drums in my opinion would

not by itself be sufficient for cancellation of the licence of the petitioner in absence of any other connecting materials.

For the reasons aforementioned the order passed by the Licensing Authority dated 16.9.2011 in Supply Case No.13 of 2010-11 as well as the order passed by the appellate authority dated 23.7.2013 in Supply Case No.10 of 2012 cannot be upheld and are accordingly set aside. The licence of the petitioner stands restored.

The writ petition is allowed.

(Jyoti Saran, J)

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