

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13231 of 2014

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Varun Prasad Gupta, son of Late Sushil Prasad Gupta, resident of Village- Mahada, P.O.-
Bamdeo, P.S.- Rajaun, District- Banka.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Food and Consumer Protection Department,
Old Secretariat, Patna.
2. The Collector, Banka, District-Banka.
3. The Licensing Authority -cum- Sub- Divisional Officer, Banka, District- Banka.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajeev Kumar Labh

For the Respondent/s : Mr. Upendra Pratap Singh, AC to SC-25

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 15-05-2015

Heard Mr. Rajeev Kumar Labh, learned counsel for the
petitioner and Mr. Upendra Pratap Singh, learned Assisting
Counsel to Standing Counsel No.25 for the State.

The petitioner is aggrieved by the order bearing Memo
No.75 dated 23.3.2010 by which the licence of the petitioner
bearing No.7 of 1990 issued under the Public Distribution System
(Control) Order, 2001 as enforced vide Fair Price Shop Order,
2007 (hereinafter referred to as 'the Control Order') has been
suspended by the Licensing Authority -cum- Sub-Divisional
Officer, Banka together with the order bearing Memo No.157
dated 5.5.2010 whereby the licence of the petitioner has been
cancelled. The order of cancellation stands affirmed vide order
dated 21.3.2014 when the appeal of the petitioner bearing Supply
Appeal No.11 of 2010-11 has been dismissed by the appellate
authority i.e. the Collector, Banka. Copies of the suspension order,

the Cancellation order and the appellate order are placed at Annexures- 6, 1 and 8 respectively to the writ petition.

A very short issue has been raised by Mr. Labh to contest the impugned order relying upon a Division Bench judgment of this Court rendered in the case of **Shiv Chandra Jha vs. Harideo Jha** as reported in **2013(3) PLJR 956**. He submits that a show cause notice was issued to the petitioner on 11.2.2009, a copy of which is placed at Annexure-2 to the writ petition and which was responded by the petitioner vide Annexure-3. It is stated that a second show cause notice was thereafter issued on 2.12.2009 charging the petitioner with the alleged irregularity which again was replied by the petitioner on 11.12.2009 vide Annexure-5. Not being satisfied by the reply that the Licensing Authority –cum- Sub-Divisional Officer, Banka vide Memo no.75 dated 23.3.2010 while suspending the licence of the petitioner, issued a notice against the proposed cancellation and which again was responded to by the petitioner on 8.4.2010 which was not accepted and by the order bearing Memo No.157 dated 5.5.2010 the licence of the petitioner has been cancelled. He submits that for the same set of allegation the petitioner has been awarded the penalty of suspension of licence vide order bearing Memo no.75 dated 23.3.2010 present at Annexure-6 thus he cannot be saddled with the penalty of cancellation for the same set of allegation vide order passed on 5.5.2010 placed at Annexure-1.

In normal circumstances this Court would have permitted the respondents to file their reply to the issue raised but considering that the issues raised by Mr. Labh stands concluded in the judgment rendered in the case of **Shiv Chandra Jha** (supra) this Court is not persuaded to delay the matter for it would not result in any better circumstances for the respondents.

The law stands settled in the judgment rendered in the case of **Shiv Chandra Jha** (supra) and once the Licensing Authority has awarded the punishment of suspension for the alleged irregularities there cannot be a second penalty of cancellation for the same set of charges.

In the circumstances where the petitioner has already suffered the penalty of suspension vide order dated 23.3.2010 (Annexure-6) the orders of cancellation and its affirmation by the appellate authority on the same set of charges cannot be upheld.

In result, the order of cancellation bearing Memo no.157 dated 5.5.2010 together with the appellate order dated 21.3.2014 passed in Supply Case No.11 of 2010-11 are set aside and the licence of the petitioner which has suffered suspension since 2010, stands restored.

The writ petition is allowed.

(Jyoti Saran, J)

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