

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.681 of 2014

Mostt. Ahilya Devi, W/O Late Rajendra Singh, resident of Village- Birpur, P.S. Raghopur, District- Vaishali at Hajipur, (An Ex-P.D.S. dealer of Birpur Panchayat, Block- Raghopur, District- Vaishali).

.... Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Govt. of Bihar, Old Secretariat, Patna-1.
2. The District Magistrate cum Chairman, District Level Selection Committee, District- Vaishali at Hajipur.
3. The Sub-Divisional Officer, Hajipur, District- Vaishali.
4. The Block Supply Officer, Raghopur, District- Vaishali.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Aditya Narayan
For the Respondent/s : Mr. Ankit Katriar, AC to GA-9

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 21-04-2015

Heard Mr. Aditya Narayan, learned counsel appearing on behalf of the petitioner and Mr. Ankit Katriar, learned Assisting Counsel to Government Advocate No.9 for the State.

The petitioner has questioned the order dated 5.11.2012 passed by the Licensing Authority -cum- Sub-Divisional Officer, Hajipur, district- Vaishali, whereby the licence of the petitioner issued under the Public Distribution System (Control) Order, 2001 as enforced in the State of Bihar under the Bihar Fair Price Shop Order, 2007 (hereinafter referred to as 'the Control Order') bearing Licence No.07/2007 has been cancelled.

The issue raised by the petitioner to question the order



of cancellation is that although two show cause notice was issued to the petitioner with the first one dated 2.6.2012 which was duly replied by the petitioner on 21.7.2012 (Annexure-2) and which was followed by another show cause notice bearing Memo no.843 dated 1.8.2012 which again was replied by the petitioner on 9.8.2012 but thereafter the matter rested. It is stated that though none of these notices were against proposed cancellation but the Licensing Authority –cum- Sub-Divisional Officer has issued the impugned order of cancellation on 5.11.2012 placed at Annexure-7 to the writ petition.

Learned counsel submits that even though it is admitted that show cause notices indeed were issued by the Licensing Authority vide Annexures 1 and 3 respectively but they merely required the petitioner to respond to the charges and which has been duly responded by him. He submits that in absence of any show cause notice against the proposed cancellation and in absence of reasonable opportunity to the petitioner against such penalty, the order passed in the light of the show cause simplicitor placed at Annexures 1 and 3 are unsustainable and in violation of the stipulations underlying Clause 7(ii) of ‘the Control Order’.

Although a counter affidavit has been filed on behalf of the respondents but the same does not address on this issue rather it

merely discusses the alleged irregularity found on the part of the petitioner.

I have heard learned counsel for the parties and perused the records.

Although learned counsel for the State laboured hard to defend the irregularity noted in the show cause notice issued but his argument would not justify the statutory violations which cast an obligation on the Licensing Authority to provide a licensee a reasonable opportunity to state his case against the proposed cancellation. It is well settled that where statute prescribes the mode and manner of doing a particular act, it has to be done in that manner alone and all other modes are strictly forbidden.

Clause 7(ii) of 'the Control Order' reads as under:

"7. Suspension and Cancellation of the Licence:

.....

(ii) If any licensee contravenes any provision or any terms and conditions of license or any of his duties and responsibilities or any order of State Government then without prejudice to any other action that it may be taken against him under the Essential Commodities Act, 1955 (Central Act 10 of 1955), his license may be cancelled by the Licensing Authority by written order.

No order of cancellation shall be made under the clause unless the licensee has been given a reasonable opportunity stating its case against the proposed cancellation. The similar matter shall be disposed by the Licensing Authority within a month."

In view of the clear stipulations in the 'Control Order' prohibiting an order for cancellation until a reasonable opportunity is provided to a dealer to state his case against the proposed cancellation the impugned order of cancellation cannot be upheld and consequently the cancellation order bearing Memo No.22 dated 5.11.2012 placed at Annexure-7 cannot be upheld and is accordingly set aside. The licence of the petitioner stands restored.

This writ petition is allowed.

This order, however, would not preclude the respondents to proceed in accordance with law.

(Jyoti Saran, J)

SKPathak/-

U			
---	--	--	--