

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.895 of 2014

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Mahendra Paswan, son of Late Kuldeep Paswan, resident of Village- Bela, Tola Bela Abri, Panchayat- Bibi Parsa, Block and Police Station- Barachatti, District Gaya.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate, Gaya.
3. The District Supply Officer, Gaya.
4. The Sub-Divisional Officer, Sherghati, District Gaya.
5. The Block Supply Officer, Barachatti, District Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Suraj NarainYadav
Mr.Nikhilesh Kumar

For the Respondent/s : Mr. Rajiv Ranjan Kumar Pandey, SC-29
Mr. Kritya Nand Jha, AC to SC-29

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 30-06-2015

The petitioner is a holder of a licence under the Public Distribution System (Control) Order, 2001 as enforced vide Fair Price Shop Order, 2007 (hereinafter referred to as ‘the Control Order’) bearing Licence No.15 of 2009. The licence of the petitioner has been cancelled vide order passed on 21.7.2010, passed by the Licensing Authority –cum- Sub-Divisional Officer, Sherghati, district- Gaya present at Annexure-5 which order has been affirmed by the appellate authority i.e., the District Magistrate, Gaya who has dismissed the statutory appeal filed by the petitioner bearing Supply Appeal Case No.20 of 2012 vide order passed on 23.9.2013 present at Annexure-8 to the writ

petition.

Mr. Suraj Narain Yadav, learned counsel has appeared for the petitioner while the State is represented by Mr. Rajeev Ranjan Kumar Pandey, learned Standing Counsel No.29.

A very short issued has been raised by Mr. Yadav, learned counsel appearing for the petitioner to question the impugned orders relying upon a Division Bench judgment of this Court reported in **2013(3) PLJR 956 (Shiv Chandra Jha Vs. Harideo Jha)**. He submits that following the initiation of proceeding vide show cause dated 25.3.2010 present at Annexure-1 charging the petitioner on six counts and requiring him to respond to the charges and on the failure of the petitioner to respond to the same, that his licence was suspended vide order passed on 8.4.2010 present at Annexure-2. He submits that subsequently the petitioner filed his show cause on 13.4.2010 with a prayer to revoke the suspension order and the matter was referred to the District Level Selection Committee presided by the District Magistrate who rejected the prayer for revocation of suspension and required the Sub-Divisional Officer, Sherghati to take a final decision. A copy of the decision of the District Level Selection Committee is present at Annexure-4 to the writ petition. It is submitted that the Licensing Authority -cum- Sub-Divisional Officer, Sherghati vide order bearing Memo no.630 dated

21.7.2010 while confirming the decision of the District Level Selection Committee whereunder the prayer of the petitioner for revocation of his suspension was rejected, has proceeded to order for cancellation of the licence of the petitioner and which order has been affirmed by the appellate authority vide order passed on 23.9.2013 in Supply Appeal No.20 of 2012 present at Annexure-8.

Mr. Yadav, learned counsel appearing for the petitioner with reference to the judgment passed by the Division Bench in the case of **Shiv Chandra Jha** (supra) submitted that the Licensing Authority having already imposed a penalty of suspension vide order passed on 8.4.2010 (Annexure-2), in view of the law settled by the Division Bench the petitioner could not have been visited with the penalty of cancellation on the self-same charges.

The argument of Mr. Yadav is contested by Mr. Pandey to justify the impugned order but in my opinion, the justification is defenceless in view of the law now settled by the Division Bench in the judgment rendered in the case of **Shiv Chandra Jha** (supra).

It is not in dispute that the petitioner for the charges set out in Annexure-1 has been visited with the penalty of suspension vide order dated 8.4.2010 present at Annexure-2. As per the provisions existing in 'the Control Order' on the said date,

a licence at best could have been suspended for a maximum period of 90 days. Though the prayer of the petitioner for revocation on this ground stood rejected but that could not have been a basis for the order of cancellation in view of the judgment passed by the Division Bench since admittedly the petitioner had been imposed the penalty of suspension for the charges present at Annexure-1 and hence for the self-same charges he could not have been imposed the second penalty of cancellation which has been done vide impugned order dated 21.7.2010 (Annexure-5) as affirmed by the appellate authority vide Annexure-8.

Having heard learned counsel for the parties and in view of the law laid down in the Division Bench judgment rendered in the case of **Shiv Chandra Jha** (supra), the impugned order of cancellation present at Annexure-5 as affirmed by the appellate authority vide order passed on 23.9.2013 in Supply Appeal No.20 of 2012 (Annexure-8) cannot be upheld and are accordingly set aside.

The writ petition is allowed. The licence of the petitioner stands restored.

(Jyoti Saran, J)

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