

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15961 of 2008

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Yogendra Prasad, son of Ayodhya Prasad Singh, resident of Village-Mankurha, P.S. Paliganj, District-Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Food & civil Supply Department, Bihar, Patna
2. District Magistrate, Patna
3. Sub-Divisional Officer, Paliganj, District-Patna
4. Block Supply Officer, Paliganj, District Patna
5. Bijay Kumar Singh son of late Shyam Sunder Prasad Singh, resident of village Mankurha-Khanpura P.s. Paliganj, District-Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Angad Singh

For the Respondent/s : Mr. (Aag3)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

C.A.V. JUDGMENT

13 16-03-2015

1. The petitioner in the present writ application seeks quashing of the order issued vide memo no.04 dated 20.7.2008 (Annexure-7) passed by the Sub-Divisional Officer, Paliganj (Patna) by which the licence of the petitioner for running a shop under Public Distribution System (hereinafter referred to as PDS) has been cancelled. The Shop has been described as Shop No. 2 of 2001 (old) and Shop No. 137 of 2007 (new) for Mera-Khanpur Gram Panchayat under Paliganj Block of Patna District.

2. Before I come to the merits of the case, I must point out the circumstance in which the impugned order came to be passed by the Sub-Divisional Officer, Paliganj leading to filing of the present writ application.



3. Respondent No.5 Bijay Kumar Singh also held licence to run shop under the Public Distribution System for the same Panchayat. He had filed a writ application being CWJC No. 14985 of 2001 with a grievance that licence to other dealers had been granted in breach of the guideline formulated by the State Government which required that one PDS Shop should be established for every population of 1900. It was plea of Respondent no.5 before this Court in CWJC No. 14985 of 2001 that number of dealers in a Panchayat could not be more than what was permissible under the circular issued by the State Government. This Court disposed of the writ application CWJC No. 14985 of 2001 by an order dated 6.10.2007 in the following terms:-

“The petitioner, however, does have a right to assert and show that the appointments of additional dealers are to the utter violation of the circular in question. If this is not justifiable by the State then it would clearly be the case of abuse of discretionary powers and thus in this way, their actions would be amenable to jurisdiction of this Court for judicial review. In the present case, which was filed in the year 2001, the census for 2001 had not been finally published. Much water has flown in the Ganga since then. The petitioner would be well advised to make a detailed representation to the Collector of the district and the Sub-Divisional Officer of his sub-division giving the unitwise breakup of various PDS dealers in his sub-division and the authorities could then judge the same in accordance with the guidelines and take an appropriate decision in this regard keeping in



view the 2001 census and the expected increase in population since then. Such an exercise must be completed within one month of petitioner's filing a representation as noted above to the officials as indicated above. The decision must be communicated to the petitioner immediately thereafter. In case it is found that the number of public distribution dealers have to be reduced then the reduction exercise would be carried out on the basis of last come first go and if they are to be increased, the same would be done after due public notice in the area.

With these observations and directions, this writ application is disposed of”.

4. The petitioner of the present case had preferred Letters Patent Appeal vide LPA No. 225 of 2008 which was permitted to be withdrawn by an order dated 25.3.2008 (Annexure-6) with liberty to him to assail the order to be passed pursuant to the order of this Court dated 6.10.2007, if that went adverse to him. In compliance of the order dated 6.10.2007, the Sub-Divisional Officer, Paliganj vide impugned order dated 20.7.2008 cancelled the petitioner's licence with immediate effect, on the ground that the criteria of one shop for each 1900 of population was not fulfilled and since the petitioner was appointed as dealer later, his licence was required to be cancelled applying the rule of “last come first go”. This writ application was taken up earlier by this Court on 2.7.2013 and was allowed



by an order dated 2.7.2013. Respondent no.5 preferred a Letters Patent Appeal against the said order dated 2.7.2013 passed in this, case being LPA No. 1153 of 2013. On the ground that respondent no.5 was not noticed before passing of the order dated 2.7.2013, a Division Bench of this Court set aside the order dated 2.7.2013 passed in the present case and remitted the matter back, vide order dated 25.08.2014 passed in LPA No.1153 of 2013.

5. In the background of the facts as noted above, the present application has been taken up. Counter affidavits have been filed by the State Respondents including Respondent no.5. I have heard learned counsel appearing on behalf of the petitioner, the State Respondents as well as Respondent no.5.

6. It is specific plea of the petitioner that he had applied for grant of licence under PDS scheme for Mera-Khanpur Gram Panchayat in the year 2000 and he was granted licence vide Licence No. 2 of 2001, after an enquiry having been made and report having been submitted by the Block Supply Officer. It is specific plea of the petitioner in the writ application in paragraph 11 that the population for the village under Mera- Khanpur Gram Panchayat on the basis of census report of 2011 was 7097 and thus, the said Panchayat had capacity for running three PDS Shops.



There is also an averment in paragraph 12 of the writ application that before grant of licence in favour of the petitioner, three shops were already running in the Gram Panchayat with Tapeswar Mochi, Bijay Kumar Singh and Nand Kishore Paswan as the dealers. In the year 1999 the licence of Nand Kishore Paswan having Licence No. 38 of 1994 was cancelled because of his involvement in Paliganj P.S. case No. 9 of 1999 registered for the offence under Section 7 of the Essential Commodities Act, 1955. It was because of the vacancy so created because of cancellation of licence of Nand Kishore Paswan that the petitioner was granted such licence by the Licensing Authority. It has also been asserted that on wrong assumption as regards population, the Sub-Divisional Officer, Paliganj has passed the impugned order.

7. In the counter affidavits, the averment made in paragraph 12 of the writ application that petitioner was appointed as dealer after cancellation of the third licensee i.e. Nand Kishore Paswan has not been denied. The petitioner has brought on record by way of Annexure-3 the population chart of Mera-Khanpur Gram Panchayat which according to him includes village 'Mankurha' and has contended that on the basis of Government Policy decision the Shop under the Panchayat had capacity for running three PDS Shop. The correctness of Annexure-3 has also

not been disputed by the respondents in their counter affidavits.

8. In the impugned order, I do not find any discussion as to whether the grant of licence in favour of the petitioner in 2001 itself was contrary to the guidelines issued by the State Government. This is to be noted that this Court, in the order dated 6.10.2008 passed in CWJC No. 14985 of 2001 which was filed by Respondent no.5, had held that the guidelines issued by the Government in this regard was internal circular which gave no enforceable right to respondent no.5, such guidelines not being law within the meaning of Article 13 of the Constitution of India. This Court simply observed that if there was an utter violation of such guidelines, the State Government will be required to take appropriate action. This Court made it specifically clear that if the number of Public Distribution System dealers were required to be reduced then in that case the reduction exercise would be carried out on the basis of last come first go.

9. I do not find any discussion in the impugned order as to how the criteria of one shop per 1900 population could not be satisfied in the present case. I am of the further view that there is no finding of the Sub-Divisional Officer, Paliganj that the number of the shops were required to be reduced. I must take note of the legal submission that the issue, suspension and cancellation of

licence for Fair Price Shop under the Public Distribution System (Control) Order, 2001 is governed by the statutory notification issued under Section 3 of the Essential Commodities Act, 1955 by the State Government of Bihar vide Notification GSR No.1 dated 20.2.2007. Clause 7 of the said notification deals with the cancellation of licence of a PDS dealer which is as follows:-

“7. Suspension and Cancellation of the Licence:-

(i) In the light of Hon’ble Supreme Court order in Civil Writ petition 196/2001, action will be taken against the licensee in the following situation:-

Licensees, who

- (a) do not keep their shops open throughout the month during the stipulated period,
 - (b) fail to provide grain to BPL families strictly at BPL rates and no higher,
 - (c) keep the cards BPL household with them,
 - (d) make false entries in the BPL cards,
 - (e) engage in black marketing or siphoning away grains to the open market and hand over such ration shops to such other person/organizations shall make themselves liable for cancellation of their license. The concerned authorities/functionaries would not show any laxity on the subject.
- (ii) If any licensee contravenes the provision, terms of the licence, duties responsibilities and order of State Government then the Licensing Authority shall suspend/cancelled the licence by a written order,
- (iii) If F.I.R, is lodged against FPS dealers for contravention of an order issued under Essential Commodities Act, 1955, their licence shall be suspended till the matter is pending before the Court of law.
- (iv) It shall be necessary to ask show cause by the Licensing Authority to licensee before suspending licence. Licensee will be given a reasonable opportunity stating his case against the proposed cancellation.
- (v) Suspension of licence shall be for a maximum period

of ninety days. In the mean time records relating to suspension of licence should be sent to the District Level Selection Committee within a fortnight from the date of suspension of licence. The Selection Committee after due enquiry shall recommend for revocation of suspension the Licensing Authority shall act accordingly.

(vi) Allocation of FPS deals shall not be discontinued under any circumstance. In case of suspension or cancellation of licence allocation to a FPS dealer should be tagged to the nearest FPS dealer.

(vii) After suspension of licence of the Licensee the consumers shall be tagged to the nearest FPS shops by the respective Block Supply Officer/ In charge Block Supply Officer/Supply Inspector.

(viii) In general circumstances the tagging of consumers shall not be changed.

(ix) All Consumers of APL, BPL and Antyodaya living within the area earmarked for a FPS dealer should be tagged to such a FPS dealer.”

10. None of the grounds available for cancellation of licence have been mentioned for cancellation of the licence of the petitioner, in the impugned order. There is no finding in the impugned order that the licence was issued in favour of the petitioner in contravention of any other statutory provision or circular. In such view of the matter, the impugned order dated 20.7.2008 passed by the Sub-Divisional Officer (Annexure-7) cannot be sustained and is accordingly set aside.

11. This application is accordingly, allowed.

(Chakradhari Sharan Singh, J)

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