

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1403 of 2015

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Ram Egbal Rai, S/o Late Ram Chandra Rai, resident of Village- Chandpura, P.S-
Raghopur, District- Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Food & Civil Supply Department,
Old Secretariat, Patna.
2. The Secretary, Food & Civil Supply Department, Old Secretariat, Patna.
3. The District Magistrate, Vaishali.
4. The Sub Divisional Officer, Hajipur, Vaishali.
5. The Block Supply Officer, Raghopur, Vaishali.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dhananjaya Nath Tiwari

For the Respondent/s : Mr. Nirbhay Kumar Singh, GP-26

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 03-07-2015

Heard Mr. Dhananjay Nath Tiwari, learned counsel
appearing on behalf of the petitioner and Mr. Nirbhay Kumar
Singh, learned Government Pleader No.26 for the State.

The petitioner holds 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.89 of 2007. The licence of the
petitioner has been cancelled under the orders of the Licensing
Officer –cum- Sub-Divisional Officer, Hajipur, district- Vaishali
vide Memo No.590 dated 17.11.2014 and being aggrieved the
petitioner is before this Court.

The learned State Counsel has raised a preliminary

objection as regarding the maintainability of the writ petition in view of the alternative remedy of appeal available to the petitioner under Clause 15 of 'the Control Order'.

Mr. Tiwari, learned counsel appearing for the petitioner responding to the preliminary objection has submitted that since the order of cancellation is apparently in teeth of the statutory provisions underlying Clause 7(ii) of 'the Control Order' inasmuch as it has been passed without issuance of notice against the proposed cancellation as mandatorily required under 'the Control Order' hence there would be no occasion to relegate the petitioner to the forum of appeal. Learned counsel in support of his submission has relied upon a judgment and order of this Court passed in CWJC No.21886 of 2013 (Parsauni Khirodhar Primary Agriculture Cooperative Society Ltd Vs. The State of Bihar), a copy of which is placed at Annexure-4 to the writ petition.

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

In normal circumstances this Court would have required the petitioner to exhaust the alternative remedy of appeal but considering that the issue raised by the petitioner regarding statutory violation by the Licensing Authority stands confirmed and is covered by the judgment of this Court rendered in the case of

Parsauni Khirodhar Primary Agriculture Cooperative Society Ltd. (supra) as also by the statutory provisions underlying Clause 7(ii) of ‘the Control Order’ hence I am persuaded to overrule the preliminary objection raised and in view a undisputable position existing regarding absence of notice against proposed cancellation, I am of the opinion that in the circumstances there would not be any requirement for awaiting the filing of a counter affidavit merely to complete a formality.

Clause 7(ii) of ‘the Control Order’ runs as follows:

“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 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 this clause unless the licensee has been given a reasonable opportunity stating its case against the proposed cancellation”. The similar matter shall be disposed of by the Licensing Authority within a month.

.....
.....”

The provisions clearly debars the Licensing Authority from passing any order of cancellation unless it precedes with a

notice of proposed cancellation.

The show cause notice dated 18.7.2014 is placed at Annexure-2 to the writ petition and confirms the grievance raised by the petitioner inasmuch as it is not a notice against the proposed cancellation. Thus on this limited account the order of cancellation cannot be upheld and as a consequence the order of cancellation bearing Memo No.590 dated 17.11.2014 passed by the Licensing Authority –cum- Sub-Divisional Officer, Hajipur, district-Vaishali impugned at Annexure-1 is accordingly set aside.

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

This order however would not preclude the Licensing Authority to proceed in the matter afresh but in accordance with law.

(Jyoti Saran, J)

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