

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.850 of 2015

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Surendra Mahto, S/o Late Bindeshwar Mahto, resident of Village- Singhiya Khurd;
P.S. - Muffasil Samastipur; District- Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Civil Supply Department, Govt. of Bihar, Patna.
2. The Commissioner, Darbhanga Division, Darbhanga.
3. The District Magistrate, Samastipur, District- Samastipur.
4. The District Supply Officer, Samastipur, District- Samastipur.
5. The Sub-Divisional Officer, Samastipur, District Samastipur.
6. The Block Supply Officer, Samastipur Block, District Samastipur.
7. The Mukhiya cum Chairman, Panchayat Vigilance Committee, Gram Panchayat Raj Singhia Khurd; P.S. Muffasil Samastipur; District Samastipur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Suraj Narain Yadav

Mr. Bijay Bhushan Prasad

For the Respondent/s : Mr. Sandeep Singh, AC to GP-9

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 20-04-2015

Heard Mr. Suraj Narain Yadav, learned counsel
appearing on behalf of the petitioner and Mr. Sandeep Singh,
learned Assisting Counsel to Government Pleader No.9 for the
State.

The licence of the petitioner bearing Licence
No.4/208 dated 13.6.2007 granted under the Public Distribution
System (Control) Order, 2001 as enforced in the State of Bihar vide
Fair Price Shop Order, 2007 (hereinafter referred to as 'the Control
Order') has been cancelled by the Licensing Authority –cum- Sub-
Divisional Officer, Samastipur vide order passed on 19.9.2013 in

Case No.32 of 2013, a copy of which is placed at Annexure-6 to the writ petition.

While the challenge to the order of cancellation remained pending before this Court that the appeal preferred by the petitioner bearing Appeal No.97 of 2013 also has been dismissed by the District Magistrate, Samastipur vide order passed on 22.1.2015 and which has been placed on record vide Annexure-7 to I.A. No.1576 of 2015. This Court taking note of the development has permitted the petitioner to question the appellate order as well in the present proceeding vide order passed on 19.3.2015.

The allegation against the petitioner stands recorded in the charge memo issued by the Licensing Authority dated 13.9.2013 placed at Annexure-2 which charges the petitioner with retaining of coupons of one year while he allegedly distributed the ration for one month only. There is no other charge.

The charge so set out which is on the basis of an inspection made by the Assistant District Supply Officer, Samastipur and the Block Supply Officer separately, was responded to by the petitioner by filing his reply, a copy of which is placed at Annexure-5. The petitioner while denying the allegation, has submitted that for convenience, the consumers sometimes deposit their coupons with him but there is no such allegation that these



coupons have been misused by the petitioner at any stage. It is a matter of record that there is no identification of those consumers and the orders have been passed charging the petitioner for irregularities in distribution of ration and thus flouting the obligation cast upon him under Clause-7 of 'the Control Order'. The order of cancellation stands affirmed by the appellate authority and hence this writ petition.

It is the argument of Mr. Yadav that although the charge set out against the petitioner is limited to retention of the coupons but while passing the impugned order, the statutory authorities have traveled beyond the charge for recording irregularities in distribution of ration when there is no such charge set out in the charge memo.

The learned State Counsel while supporting the impugned order has again reiterated the position but has submitted that since the statutory authorities did find irregularity in the distribution of ration and kerosene oil by the petitioner that the orders impugned have been passed.

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

As I have already observed that the charge is limited to retention of coupons by the petitioner for one year but while



making such sweeping charge the names of the consumers are missing. The statement of these consumers also does not find mention in the charge memo or in the enquiry reports which are placed at Annexures 3 and 4 to the writ petition. It is the contention of the petitioner that these reports have never been supplied nor he was confronted with any such charge.

Be that as it may, taking note of the fact that the charge memo did not reflect any irregularities in so far as the month to month distribution by the petitioner is concerned nor does it make any reference to the aggrieved consumers affording reasonable opportunity to the petitioner to rebut the allegation, I am of the opinion that for a mere charge of retention of coupons without being supported with any evidence of its misuse, an extreme penalty of cancellation of licence cannot be imposed on the petitioner. There is no charge of black-marketing or of denial of ration to any of the consumers and in such circumstance I am of the opinion that the order of cancellation and its affirmation is without any evidence rather are founded on allegations which are not set out in the charge memo. The statutory authorities cannot travel beyond the charge memo.

In result the order of cancellation as contained in Annexure-6 as well as its affirmation by the appellate authority vide

Annexure-7 cannot be upheld and are accordingly set aside. The
licence of the petitioner stands restored.

The writ petition is allowed.

(Jyoti Saran, J)

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