

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1948 of 2013

=====

Ram Narayan Paswan, Son of Late Ram Baran Paswan, Resident of Village
- Dakshin Dumri, P.S. - Patori, District - Samastipur

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Samastipur
3. The Sub-Divisional Officer Patori, Samastipur

.... Respondent/s

=====

With

Civil Writ Jurisdiction Case No.2713 of 2013

=====

Usha Kumari, W/O Rabindra Kumar Rai, R/O Village- Rajpur (Jounapur),
P.S.- Patori, District- Samastipur

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Samastipur
3. The Sub-Divisional Officer, Patori, Samastipur

.... Respondent/s

=====

With

Civil Writ Jurisdiction Case No.2731 of 2013

=====

Ranjeet Prasad Singh, S/O Late Gulab Prasad Singh, R/O Village-
Vishanpur Bari, P.S.- Mohidin Nagar, District- Samastipur

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Samastipur
3. The Sub-Divisional Officer, Patori, Samastipur

.... Respondent/s

=====

With

Civil Writ Jurisdiction Case No.3077 of 2013

=====

Radha Raman Rai, S/O Late Maugi Lal Rai, Resident of Village-
Dharmipati (West), P.S- Patori, District- Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Samastipur.
3. The Sub- Divisional Officer Patori, Samastipur.

.... Respondent/s



=====

With

Civil Writ Jurisdiction Case No.3101 of 2013

=====

Punam Devi, W/O Rudal Paswan, R/O Village- Bindgama, P.S.- Patori,
District- Samastipur

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Samastipur
3. The Sub-Divisional Officer, Patori, Samastipur

.... Respondent/s

=====

With

Civil Writ Jurisdiction Case No.3458 of 2013

=====

Anita Devi, W/O Gautam Rai, R/O Village- Baghara, P.S.- Patori, District-
Samastipur

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Samastipur
3. The Sub-Divisional Officer, Patori, Samastipur

.... Respondent/s

=====

With

Civil Writ Jurisdiction Case No.21223 of 2013

=====

Ram Prasad Paswan, Son of Late Samrit Paswan, Resident of Village -
Mohampur, P.S. Patori, District - Samastipur

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Samastipur
3. The Sub - Divisional Officer, Patori, Samastipur

.... Respondent/s

=====

Appearance :

(In CWJC No.1948 of 2013)

For the Petitioner/s : Mr. Ashok Kumar Mishra

For the Respondent/s : Mr. Ghanshyam Sharma, AC to GA-7

(In CWJC No.2713 of 2013)

For the Petitioner/s : Mr. Ashok Kumar Mishra

For the Respondent/s : Mrs. Madhulata Verma, AC to GA-2

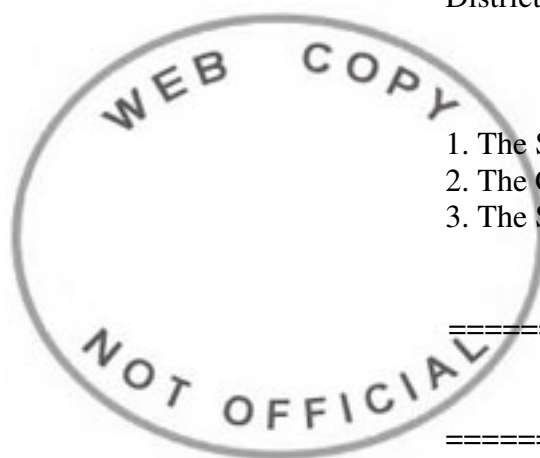
(In CWJC No.2731 of 2013)

For the Petitioner/s : Mr. Ashok Kumar Mishra

For the Respondent/s : Mr. Anshuman Singh, GP-24

Mr.Sri Ram Krishna, AC to GP-24

(In CWJC No.3077 of 2013)



For the Petitioner/s : Mr. Ashok Kumar Mishra
For the Respondent/s : Mr. Rajesh Ranjan, AC to GA-8
(In CWJC No.3101 of 2013)
For the Petitioner/s : Mr. Ashok Kumar Mishra
For the Respondent/s : Mr.
(In CWJC No.3458 of 2013)
For the Petitioner/s : Mr. Ashok Kumar Mishra
For the Respondent/s : Mr.
(In CWJC No.21223 of 2013)
For the Petitioner/s : Mr. Ashok Kumar Mishra
For the Respondent/s : Mr. Uday Shankar Sharan Singh, GP-1
Mr.Uday Bhan Singh, AC to GP-1

=====

CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT

4 18-05-2015

In all the above 7 writ petitions a common order dated 14.12.2012 (Annexure-7) passed by the respondent District Magistrate, Samastipur, being the appellate authority, in terms of Clause 15 of the Notification dated 20.02.2007 issued by the Food, Supply and Commerce Department, Government of Bihar under Public Distribution System (Control) Order, 2001, is under challenge. Therefore, with the consent of the parties, all the above 7 writ petitions have been heard together and are being disposed of by this common judgment.

Learned counsel appearing on behalf of the petitioners of all the above 7 writ petitions submits that the petitioners were granted licences for running their respective PDS shops by the licensing authority, but their licences were cancelled by the licensing authority namely, S.D.O., Patori by his common order dated 10.05.2010 (Annexure-4) on the charges that they sold the wheat supplied to them for distribution amongst the APL card holders in black-market. It is contended that the petitioners, besides others, being aggrieved by the aforesaid common order dated 10.05.2010 (Annexure-4), filed their separate writ petitions before this Court, but all the writ petitions were heard together and were disposed of by a common order dated 07.09.2010 (Annexure-5) passed in CWJC No.9874 of 2010 and its analogous



writ petitions. By the aforesaid common order dated 07.09.2010 the petitioners were directed to file their respective appeals before the appellate authority, which was directed to be considered on merit. It is contented that in the light of the aforesaid observations and directions dated 07.09.2010 (Annexure-5) all the petitioners filed their separate appeals before the respondent District Magistrate, Samastipur giving rise to the Case No.47 of 2010 and other analogous cases, which all have been mentioned in the impugned order dated 14.12.2012 (Annexure-7). Since all these appeals/applications filed by the petitioners were against a common order dated 10.05.2010 (Annexure-4), therefore, all these matters were heard together by the District Magistrate, Samastipur and by the impugned common order dated 14.12.2012 (Annexure-7) the appeals filed on behalf of the petitioners, besides others, have been dismissed and the order dated 10.05.2010 (Annexure-4) passed by the respondent S.D.O., Patori, the licensing authority, was affirmed.

While assailing the validity and correctness of the impugned orders passed by the respondents, learned counsel appearing on behalf of the petitioners submits that the respondent District Magistrate, Samastipur has dismissed the appeals filed on behalf of the petitioners primarily on two counts: firstly the petitioners remained absent in their cases on different dates mentioned in the impugned appellate order; and secondly on the merit of the case. But, according to the learned counsel at the time of final disposal of the appeals filed on behalf of the petitioners they were not represented by their lawyers before the respondent District Magistrate, Samastipur in view of the fact that Bar Association of Samastipur district had taken a resolution to abstain the court proceeding of the respondent District Magistrate, Samastipur for certain valid reasons. According to him, the

impugned appellate order has been passed behind the back of the petitioners without giving them reasonable opportunity to place their cases on merits. Therefore, it is pleaded that the appeals filed on behalf of the petitioners are required to be re-heard and re-decided after giving them reasonable opportunity of hearing. The fact regarding abstention of the court of the respondent District Magistrate, Samastipur has been asserted in paragraph 18 of the writ petition.

The matter has been contested by the respondents by filing their separate counter affidavits in each of the writ petitions by the respondent nos.2 and 3. In the aforesaid counter affidavits, the original order passed by the respondent S.D.O., Patori, Samastipur, being the licensing authority, as also the appellate order passed by the respondent District Magistrate, Samastipur are sought to be defended on merits. According to the learned State counsel, appearing on behalf of the respondents, there are/were serious charges of black-marketing of the wheat by the petitioners which was meant for distribution amongst the consumers of APL card holders, therefore, the impugned orders passed by the respondent authorities cannot be legally faulted. However, despite repeated query made by this Court, none of the learned State counsel appearing on behalf of the respondents in this batch of writ petitions has been able to controvert the assertions made on behalf of the petitioners that the members of Samastipur Bar Association had taken a resolution to abstain from the court proceeding of the respondent District Magistrate, Samastipur. They have not been able to show from their pleadings in the respective counter affidavits that court of respondent District Magistrate, Samastipur was not being abstained by the lawyers during the relevant period, when the impugned appellate order was passed.



After having heard the parties and on consideration of the materials available on the record, this Court is of the opinion that the appeals filed by the petitioners before the respondent District Magistrate, Samastipur are required to be re-heard and re-decided on merits afresh. Apparently, when the impugned appellate order was passed by the respondent District Magistrate, Samastipur, the petitioners were not represented by their learned counsels in view of on going abstention of the court's proceeding of the District Magistrate, Samastipur. The respondent District Magistrate, Samastipur has recorded a finding that the petitioners were absent in these appeals for last several dates, yet he considered the materials available on the record and passed the impugned appellate order. For the ends of justice, this Court is of the opinion that one more opportunity should be given to the petitioners to place their points before the respondent District Magistrate, Samastipur in support of their respective appeals filed against the common order dated 10.05.2010 (Annexure-4) passed by the respondent S.D.O., Patori.

For the reasons recorded above, the impugned common order dated 14.12.2012 (Annexure-7) passed by the respondent District Magistrate, Samastipur with respect to appeals filed on behalf of the petitioners is hereby set aside and quashed and the matter is remitted back with a direction to the respondent District Magistrate, Samastipur to pass a fresh order in the appeals preferred by the petitioners in accordance with law after giving them an opportunity of hearing. In above view of the matter, all the petitioners are hereby directed to appear before the respondent District Magistrate, Samastipur within a period of three weeks from today with a certified copy of the present order, whereafter, the respondent District Magistrate, Samastipur shall fix a firm date for hearing their appeals afresh on merits and for passing fresh

order in accordance with law. All endeavours shall be made by the respondent District Magistrate, Samastipur to decide their appeals on an early date preferably within a period of three months from the date of appearance of the petitioners in the manner indicated above.

It is clarified that, if the petitioners fail to appear on the dates fixed by the respondent District Magistrate, Samastipur, then the District Magistrate shall be at liberty to proceed further in accordance with law and, in that case, the petitioners shall not be allowed to challenge such final order(s) passed by the District Magistrate, Samastipur on the ground of violation of principles of natural justice.

In the result, all the aforesaid 7 writ petitions stand allowed to the extent indicated above but with the observations and directions made above. However, there shall be no order as to costs.

Arvind/-

(Birendra Prasad Verma, J)

U			
---	--	--	--