

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1362 of 2015

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Rajkali Devi, wife of Late Hira Paswan, resident of Village- Adamban, P.O.-
Nandwara, Panchayat- Bangahi, P.S.- Baargania, District- Sitamarhi.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Secretary, Food and Civil Supplies, Government of Bihar, Patna.
3. The District Magistrate, Sitamarhi, District- Sitamarhi.
4. The Sub-Divisional Officer, Sitamarhi Sadar, District- Sitamarhi.
5. The District Supply Officer, Sitamarhi, District- Sitamarhi.
6. The Block Supply Officer, Baargania, District- Sitamarhi.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.B.K. Manglam
Mr. Chandan

For the Respondent/s : Mr. Ranjeet Kumar Pandey, AC to GP-23

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 24-06-2015

Heard Mr. S.B.K. Manglam, learned counsel appearing
on behalf of the petitioner and Mr. Ranjeet Kumar Pandey, learned
Assisting Counsel to Government Pleader No.23.

The petitioner is a dealer under the Public Distribution
System (Control) Order, 2001 as enforced vide Fair Price Shop
Order, 2007 (hereinafter referred to as 'the Control Order') holding
Licence No.44 of 2007. The licence of the petitioner has been
cancelled by the Licensing authority –cum- Sub-Divisional Officer,
Sitamarhi Sadar, district- Sitamarhi vide order bearing Memo
no.790 dated 25.11.2014 and hence this writ petition.

Two issues have been raised by Mr. Manglam, learned

counsel appearing for the petitioner to question the impugned order, namely:

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- (a) The order of cancellation rests on charges which do not find mention in the charge memo issued to the petitioner vide letter dated 21.7.2014 of the Licensing Authority –cum- Sub-Divisional Officer, Sitamarhi Sadar, a copy of which is placed at Annexure-1;
 - (b) The charge memo placed at Annexure-1 rests on an enquiry report of the Block Development Officer –cum- Block Supply Officer, Bairgania prepared pursuant to an enquiry held on 3.7.2014, a copy of which was not handed over to the petitioner; and
 - (c) The charges are vague and general in nature.

Mr. Manglam proceeding on the issues so raised has submitted that whereas item nos.1 and 3 of the charge memo present at Annexure-1 relatable to closure of shop on the date of inspection and non-participation by the petitioner to the meetings, is concerned, they cannot be a basis for imposing the extreme penalty of cancellation, in so far as charge no.2 is concerned which charges the petitioner of irregularity in distribution, it is vague and lacks specific details. He further submits that the petitioner had responded to the charges by filing reply placed at Annexure-2 but



the impugned order of cancellation passed by the Licensing Authority –cum- Sub-Divisional Officer, Sitamarhi Sadar refers to a second report of the Block Supply Officer dated 8.11.2014 and to the irregularity referred therein which are distinct to the allegations made in the charge memo and the petitioner was neither confronted with these irregularities nor asked to show-cause against such of the irregularities allegedly found during the course of inspection held on 8.11.2014. He further submits that none of the two reports was handed over to the petitioner for filing of a purposeful reply.

The counter affidavit is silent regarding the denial of opportunity to the petitioner to meet the irregularities allegedly found in the subsequent inspection dated 8.11.2014. In fact a reply has been made by the Block Supply Officer in paragraph 12 of the counter affidavit in which he has stated that there was no occasion to call for any explanation times and again from the petitioner pursuant to the inspection held on 8.11.2014. It is thus admitted and manifest from the records that whereas the charge memo present at Annexure-1 discusses three irregularities but the order of cancellation rests on 7 allegations and allegation nos.2 to 7 do not find mention in the charge memo present at Annexure-1. It is thus apparent that the order of cancellation has gone beyond the charge memo and thus is illegal and cannot be upheld.



Although an objection has been raised regarding the alternative remedy of appeal available to the petitioner under Clause-15 of 'the Control Order' but in view of the apparent illegality in the order of cancellation which is resting on such charges which did not find mention in the charge memo dated 21.7.2014 placed at Annexure-1 the cancellation order dated 25.11.2014 passed becomes patently illegal and is accordingly set aside. The licence of the petitioner stands restored.

This writ petition is allowed.

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

(Jyoti Saran, J)

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