

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12483 of 2013

- =====
1. Smt. Sitara Devi Daughter of Late Kalimuddin Sidduqui Resident of Mohalla Pakki Talab, Katarapar, Police Station- Laheri, Bihar Sharif District- Nalanda
 2. Vijay Kumar Son of Sri Prasadi Sao Resident of Mohalla Pakki Talab, Katarapar, Police Station- Lahedri, Bihar Sharif District- Nalanda
 3. Sunil Kumar Son of Late Ramdas Yadav Resident of Mohalla Pakki Talab, Katarapar, Police Station- Lahedri, Bihar Sharif, District- Nalanda
 4. Md. Aslam Ansari Son of Md. Kasim Resident of Mohalla Pakki Talab, Katarapar, Police Station- Lahedri, Bihar Sharif District- Nalanda

.... Petitioner/s

Versus

1. The State of Bihar
2. The Sub-Divisional Officer, Bihar Sharif, Nalanda
3. The District Supply Officer, Bihar Sharif, Nalanda
4. The Marketing Officer, Nagar Nigam, Bihar Sharif, District Nalanda
5. District Magistrate, Nalanda

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Sajid Salim Khan, Adv.

For the Respondent/s : Mr. Mithilesh Prasad Singh A.C. to S.C. 23

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

4 27-01-2015 Heard Mr. Sajid Salim Khan, learned counsel for the petitioners and Mr. Mithilesh Prasad Singh A.C. to S.C. 23 for the State.

The four petitioners who are licensee under the Public Distribution System Control Order, 2001 read with the Bihar Fair Price Shop Order 2007 have moved this Court being aggrieved by the order dated 10.1.2013 passed by the appellate authority i.e. the District Magistrate, Nalanda in Appeal Case No. 31 of 2012 whereby the District Magistrate, Nalanda while dismissing the

appeal has affirmed the order passed by the Licensing Authority-cum-Sub Divisional Officer, Biharsharif in Supply Case No. 6 of 2012, 07 of 2012, 08 of 2012 and 09 of 2012 initiated against the petitioners.

Facts of the case are in a very narrow compass and these four petitioners who are running a shop under the Public Distribution System were charged with irregularities in distribution of ration to the beneficiaries under the Antyodaya/BPL category. The proceeding was initiated on a complaint made by an individual Md. Israfil Mallik who charged these petitioners of irregularities in distribution coupons to the beneficiaries. A show cause notice is stated to have been issued to these petitioners on 26.3.2013 requiring them to respond within 3 days and upon non receipt of any reply that the Licensee Authority vide identical orders passed on 7.4.2012 which also form part of Annexure-1 series, has cancelled the licence of all these petitioners. The appeal preferred by these petitioners giving rise to Appeal No. 31 of 2012 also was dismissed and being aggrieved the four petitioners are before this Court.

Mr. Khan learned counsel for the petitioners has made the following submissions:

(a) A three days notice for filing a show cause reply shows

a premeditated mind.

(b) Even in absence of any evidence to support the allegations, the orders have been passed on presumptuous considerations.

(c) Under directives issued by the Bihar Sharif Municipal Corporation, Nalanda issued from the office of the Commissioner placed at Annexure-3 to the writ petition, the distribution of these coupons are to be made by the staff of the Municipal Corporation and who also have the responsibility to ensure that it does not go to anybody else but the beneficiaries.

It is thus submitted that in the circumstances set forth, the order impugned is unsustainable.

A counter affidavit has been filed on behalf of the respondents and which merely goes on to support the impugned orders without discussing the materials on record which form the basis for the impugned order.

I have heard learned counsel for the parties and I have perused the materials on record.

The allegation made against these four petitioners are identical and each of them have been charged of distributing ration to persons other than the rightful beneficiaries. Even when the

complainant charges these petitioners of such irregularities the names of such persons who have been provided with benefits by these petitioners are conspicuously missing.

The proceedings have been initiated on the complaint of a private individual but who does not even name the beneficiaries of the irregularities allegedly committed by these petitioners.

Obviously, in absence of identification of beneficiaries who have allegedly derived benefit and who do not fall within the category of the beneficiaries, the petitioners were precluded from giving a meaningful response to the charge. A period of three days granted to file a show cause reply itself demonstrates that the order is premeditated. The illegality in the orders impugned is further confirmed from the Circular of the Bihar Sharif Municipal Corporation placed at Annexure-3 which categorically puts the responsibility of distribution of coupons on the Supervisory officer and the staff of the Corporation and paragraph 9 of the directives categorically mentions that these coupons would not be distributed by the dealers.

In the circumstances discussed, a dealer like the petitioners could not be held responsible for any irregularity in the distribution of the coupons. Besides, there is complete silence as to the identification of beneficiaries. The orders impugned are thus

based on no evidence and have been passed in a presumptuous manner on conjectures and surmises.

For the reasons aforementioned, the order dated 10.1.2013 passed by the Collector, Nalanda in Appeal Case No. 31 of 2012 as well as the order passed by the Sub Divisional Officer dated 7.4.2012 in Case No. 6,7,8 and 9 of 2012 cannot be upheld and are accordingly set aside. The licence of the petitioners stand restored.

The writ petition is allowed.

Bibhash/-

(Jyoti Saran, J)

U			
---	--	--	--