

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.387 of 2015

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Madhuri Devi, wife of Brajkishore Singh, resident of Village- Paharpur, Bishanpur,
P.S.- Mahner, 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 District Supply Officer, Vaishali.
5. The Sub Divisional Officer, Mahnar, Vaishali.
6. The Block Supply Officer, Mahnar, Vaishali.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. N.K. Agrawal, Sr. Advocate with
Mr. Shailendra Kumar Singh

For the Respondent/s : Mr. Vivek Anand Amitesh, AC to GP-21

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 06-05-2015

Heard Mr. N.K. Agrawal, learned senior counsel
appearing on behalf of the petitioner and Mr. Vivek Anand
Amitesh, learned Assisting Counsel to Government Pleader No.21
for the State.

The licence of the petitioner bearing No.28 of 2007
issued under the provisions of 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-
Division Officer, Mahnar, District-Vaishali vide order bearing
Memo no.442 dated 9.3.2013 placed at Annexure-13 and which

order has been affirmed by the appellate authority when the statutory appeal preferred by the petitioner bearing P.D.S. Appeal No.R07 of 2013-14 has been dismissed on 16.9.2014.

Mr. Agrawal, learned senior counsel appearing on behalf of the petitioner questions the impugned orders on three counts and which stands recorded in the order of this Court passed on 16.2.2015 and which are as follows:

- (a) There is a separate order on file placed at Annexure-12 which nowhere discusses the matter rather proceeds to pass final order of cancellation and which is followed by another order which is communicated to the petitioner vide Memo no.442 dated 9.3.2013 which has a reflection of discussion. He submits that an authority performing quasi-judicial functions cannot pass two orders which are at variance with each other;
- (b) The opinion of the Licensing Authority is entirely based upon the report of the Block Supply Officer and does not deal with the issues raised by the petitioner regarding the complainants not being attached with her shop; and
- (c) The order of cancellation assigns no reason for rejecting the show cause.

Thus three issues were raised by the petitioner to question the impugned orders of which, the most important is that the alleged complainants are not attached to the shop of the petitioner. To confirm the defence a register of consumers was produced by learned counsel for the petitioner before this Court on



6.4.2015 which in turn was handed over for verification to the counsel for the State and which was returned with no suspicion. On the strength of the register it was specifically argued by Mr. Agrawal that the 8 alleged complainants were not attached to the shop of the petitioner and that the entire proceeding is based upon a report of the Block Supply Officer without adjudicating on the stand taken by the petitioner.

Vide order passed on 7.4.2015 the District Magistrate, Vaishali was required to inform this Court the documents maintained in the district to identify the consumers attached to a particular shop. The District Magistrate has responded to the direction of this Court and has filed an exhaustive counter affidavit and learned counsel for the State very fairly admits that earlier there was no system to identify the consumers attached to the shop which is now being maintained and is also available on the web-site. This single stand of the State is sufficient to allow the writ petition for if the complainants are not attached to the shop of the petitioner, she could not be penalized for any complaints made by these consumers.

Apart from the fact that the order is non-descriptive and entirely rest upon the report of the Block Supply Officer, it is also an improvement on the order passed by the Licensing Authority, a

copy of which is enclosed at Annexure-12. Unfortunately these relevant aspects of the matter have escaped the attention of the appellate authority while dismissing the appeal of the petitioner.

This Court in view of the uncontested position that the alleged complainants were not attached to the shop of the petitioner, is satisfied that the petitioner cannot be visited with the penalty of cancellation on such complaints and in consequence the order of cancellation placed at Annexure-13 as well as the appellate order dated 16.9.2014 placed at Annexure-14 cannot be upheld and are accordingly set aside.

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

(Jyoti Saran, J)

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