

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.838 of 2015

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1. Santosh Kumar son of Late Nand Lal Prasad, resident of village- Chabail,
P.S- Kothi, District- Gaya.

.... Petitioner/s

Versus

1. The State of Bihar through District Magistrate, Gaya.
2. The SDO, Sherghati, Gaya.
3. The BDO, Imamganj, District- Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vijay Anand, Adv.

For the Respondent/s : Mr. Ram Subhash Singh, A.C. to AAG 15

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

3 06-04-2015 Heard Mr. Vijay Anand learned counsel for the petitioner
and Mr. Ram Subhash Singh, A.C. to AAG 15 for the State.

The petitioner is licensee 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'). The licence of the petitioner bearing No. 2 of 2012 has been cancelled by the Licensing Authority-cum-Sub Divisional Officer, Sherghati, District-Gaya vide order bearing Memo No. 428 dated 20.8.2014 as contained in Annexure-4 inter alia on grounds of institution of a criminal case against the petitioner arising from Pothi P.S. Case No. 61 of 2013 registered for the offence punishable under Section 7 of the Essential Commodities Act, 1955 (hereinafter referred to as 'the Act').

Mr. Anand, learned counsel for the petitioner with reference



to the provisions of the 'Control Order' has submitted that although initially there existed a provision under Clause 7(iii) of the 'Control Order' which entitled the statutory authority to suspend a licence upon institution of a criminal case for violation of any of the 'orders' issued under 'the Act' but by virtue of the amendment made in the Control Order effective from 23.6.2011, the said provision stands deleted and presently the only provision which governs the issue is Clause-14 which vests the Licensing authority to cancel the licence of a dealer only if a conviction is recorded against him in a criminal case instituted for violation of any 'order' issued under 'the Act'. He submits that since in the present case it is on mere institution of a criminal case that the licence has been cancelled hence in view of the deletion of Clause 7(iii) from the 'Control Order', and in view of the stipulation present in Clause-14, the cancellation order is unsustainable.

A counter affidavit has been filed and which though questions the right of the petitioner to continue with the licence in view of the allegations surrounding the police case but does not answer the legal issue raised by the petitioner.

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

The issue raised by Mr. Anand stands settled in an order of this Court passed in **C.W.J.C. No. 4300 of 2013 (Dharamdew**

Chaudhary versus The State of Bihar & Ors.). This Court considering the provisions underlying the ‘Control Order’ with regard to cancellation of a licence upon institution of a criminal case, has held that in absence of any provision which enables the statutory authority to take any action against the dealer on a mere institution of a criminal case, the cancellation order passed in such circumstance would be unsustainable for in view of Clause 14 of the ‘Control Order’ such order can be passed only where a conviction is recorded against a dealer for violation of any ‘Order’ issued under ‘the Act’.

In the circumstances discussed the order of cancellation of licence of the petitioner on mere institution of a criminal case is an exercise without legal sanction.

For the reasons aforementioned, the cancellation order as contained in Annexure-4 cannot be upheld and is accordingly set aside. The licence of the petitioner stands restored.

The order so passed would not preclude the statutory authorities in proceeding against the petitioner, in case of conviction recorded against him arising from Kothi P.S. Case No. 61 of 2013.

The writ petition is allowed.

Bibhash/-

(Jyoti Saran, J)

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