

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.864 of 2014

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Baikunth Sharma, S/O Late Kameshwar Singh, resident of Village - Khudauri, P.S.-
Hulasganj (Ghosi), District – Jehanabad.

.... Petitioner/s

Versus

1. The State of Bihar through the Collector, Jehanabad.
2. The Collector, Jehanabad.
3. The Sub-Divisional Officer, Jehanabad.
4. The District Supply Officer, Jehanabad.
5. The Block Supply Officer, Hulasganj, District – Jehanabad.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. N.K. Agrawal, Sr. Adv. with
Mr. Jharkhandi Upadhyay
Mr. Dhananjay Nath Tiwary

For the Respondent/s : Mr. Karandeep Kumar, AC to GP-4

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 23-06-2015

Heard Mr. N.K. Agrawal, learned senior counsel
appearing on behalf of the petitioner and Mr. Karandeep Kumar,
learned Assisting Counsel to Government Pleader No.4 for the
State.

The petitioner is aggrieved by the order dated
3.10.2012 passed by the the Licensing Authority –cum- Sub-
Divisional Officer, Jehanabad, whereby the licence granted to the
petitioner under the Public Distribution System (Control) Order,
2001 as enforced vide Fair Price Shop Order, 2007 (hereinafter
referred to as ‘the Control Order’) has been cancelled and which
order stands affirmed by the appellate authority when the appeal
preferred by the petitioner bearing Appeal No.08/DM of 2013 has

been rejected vide order passed on 12.11.2013.

The facts of the case is in a very narrow compass. The petitioner is a holder of licence for running a fair price shop bearing Licence No.23 of 2007. A show cause was issued to the petitioner by the Licensing Authority –cum- Sub-Divisional Officer, Jehanabad on 14.9.2012, a copy of which is placed at Annexure-4 and whereby the petitioner was required to respond to five charges, failing which it was directed that proceedings would be initiated for cancellation of his licence after suspending the same. The petitioner was charged on five counts, namely;

- (a) The notice board was not put up;
- (b) The stock position was not reflected in the notice board;
- (c) No document in support of weights and measures was produced by the petitioner;
- (d) The stock present with the petitioner was less by 22.36 quintals in so far as wheat is concerned and even the stock position of rice and kerosene oil was found short by 35.19 quintals and 346.750 litres respectively; and
- (e) Some of the consumers belonging to Durgapur Mushari Toli complained of irregularity in distribution of ration.



The show cause refers to a report of a Special Officer which is enclosed with the notice. A detail reply was filed by the petitioner contesting each of the allegations and showing his willingness to produce his record to remove any confusion whatsoever, a copy of which is placed at Annexure-5 to the writ petition. The petitioner specifically stated that he has been distributing the materials in accordance with law and that there is no infirmity. He has also drawn the attention of the Licensing Authority that he is dealing in the fair price shop since five years and never on any earlier occasion had there been any complaint. The explanation of the petitioner has been rejected by the Licensing Authority vide impugned order passed on 3.10.2012 resulting in cancellation of licence and which order stands affirmed by the appellate authority when the appeal filed by the petitioner was rejected and hence this writ petition.

Mr. Agrawal, learned senior counsel appearing on behalf of the petitioner has questioned the order on the following grounds:

- (a) There is no notice against the proposed cancellation;
- (b) Charging the petitioner with supply of less ration while charging excess value is though very serious but it does not find mention in the charge memo present at Annexure-4;

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- (c) Of the five allegations made against the petitioner present at Annexure-4 whereas non-maintenance of the notice board may be a irregularity but is not of such extreme nature so as to warrant cancellation;
- (d) The charge of non-production of the document relating to weights and measures stood satisfied as it was produced by the petitioner and even the position with regard to the stock materials had been explained by the petitioner in his reply.
- (e) While refuting to the allegation made by some of the consumers Mr. Agrawal has relied upon the statement made by these persons a copy of which has been placed on record in the counter affidavit to submit that there is nothing in the statement which would reflect any irregularity. He further submits that though the statement of these consumers had been relied upon by the Licensing Authority but they were not produced by the department to enable the petitioner to cross examine those consumers.
- (f) Learned counsel relying upon a Division Bench judgment of this Court reported in **1972 PLJR 635 (Ramdeo Burnwal vs. The State of Bihar)** has submitted that it is well recognized that a dealer is not expected to update his stock register each moment rather the duty imposed on

such dealer is to update his stock position by the end of the day and before beginning of the next day. He thus submits that since the inspection has been carried out in the middle of the day, there cannot be any charge on the issue of less stock position when the sale is yet to be reconciled

The argument of Mr. Agrawal has been contested by the learned State Counsel to submit that the charges against the petitioner are serious and are supported by the statements made by the consumers. He further submits that there was all opportunity available to the petitioner to refute the allegation but he has not discharged his duty.

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

True it is that the most serious charge of the five charges which is the foundation of the impugned order, present at Annexure-1 questions the bonafides of the petitioner as a retail dealer when it alleges him of supply of less materials and of charging higher price but surprisingly this charge does not find mention in the charge memo present at Annexure-4 and thus could not have been made the basis for cancellation of licence.

This would bring this Court to the other charges. It is seen that of the remaining charges whereas the petitioner has fairly accepted his lapse in maintaining the notice board, in my opinion



though the petitioner is under duty to update the notice board each day at the opening of the shop but in the circumstances reflecting and until the stock position and the registers maintained by the petitioner would reflect any illegal transaction by the petitioner in contravention of the terms of the licence a mere lapse in maintenance of notice board without corroborating material cannot be a basis for cancellation of his licence.

In so far as the non-production of document relating to weights and measures is concerned, the impugned order admits to its production along with the show cause reply. In so far as charge no.4 relating to stock position is concerned, in view of the law laid down by the Division Bench in the case of **Ramdeo Burnwal** (supra) as well as the explanation given by the petitioner in his show cause reply explaining the stock position which submission has not been rejected by the Licensing Authority on its veracity, the charge does not stand.

This would bring this Court to the last issue relating to complaint of the consumers and what I find is that the statements do not reflect whether any irregularity has resulted. Apart therefrom the lapse on the part of the department to produce the complainants to support the complaint as also affording the petitioner an opportunity to cross-examine the complainants on the allegation the said charge on its own is not sustainable.

Last but not the least is that although the show cause notice dated 14.9.2012 requires the petitioner to respond to the allegation but the said show cause notice is not a notice against proposed cancellation rather it is a caution to the petitioner that his failure to respond to the notice would entail suspension and that proceeding would be initiated for cancellation of licence. Meaning thereby there is no notice against the proposed cancellation, and on this ground also the cancellation orders cannot be upheld.

For the reasons aforementioned the orders impugned in this writ petition are unsustainable and are accordingly set aside.

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

(Jyoti Saran, J)

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