

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.389 of 2015

Sawood Alam Son of Haji Abdul Karim resident of village Rani Gram
Panchayat Pathrabari P.S. Jokihat, District- Araria

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Food and Consumer Protection
Department, Old Secretariat, Patna
2. The Collector-cum-District Magistrate, Araria, District Araria
3. The Sub-Divisional Officer, Araria District- Araria

.... Respondent/s

with

Civil Writ Jurisdiction Case No.1542 of 2015

Md. Sohrab Alam. Son of Md. Ilyas. Resident of village - Uдахат Gram
Panchayat Chirah, P.S.- Mahalgaon, District - Araria.

... Petitioner/s

Versus

1. The State of Bihar, through the Secretary Food and Consumer Protection
Department Old Secretariat, Patna.
2. The Collector-cum-District Magistrate, Araria. District - Araria.
3. The Sub-Divisional Officer, Araria. District - Araria.

.... Respondent/s

with

Civil Writ Jurisdiction Case No.19170 of 2014

Bibi Talat Jahan wife of Md. Faiyaz Alam, resident of Village Jogindar
Gram Panchayat Bhansia, P.S.- Mahalgaon, District- Araria

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Food and Consumer Protection
Department, Old Secretariat, Patna
2. The Collector-cum-District Magistrate, Araria, District- Araria
3. The Sub-Divisional Officer, Araria, District- Araria

.... Respondent/s

with

Civil Writ Jurisdiction Case No.19332 of 2014

Md. Masud Alam Son of Late Md. Idrish, resident of Village- Dhama,
Gram Panchayat Dhama, P.S. - Raniganj, District - Araria.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary Food and Consumer Protection
Department Old Secretariat, Patna.
2. The Collector-Cum-District Magistrate, Araria, District - Araria.
3. The Sub Divisional Officer, Araria, District- Araria.

.... Respondent/s

with

Civil Writ Jurisdiction Case No.16533 of 2014

Pradeep Chaudhary, son of Anandi Chaudhary, resident of village-
Dhantola, Gram Panchayat Kankhudiya, P.S. Palasi, District-Araria
..... Petitioner/s

Versus

1. The State of Bihar through the Collector, Araria
2. The Collector, Araria
3. The Sub-Divisional Officer, Araria

..... Respondent/s

with

Civil Writ Jurisdiction Case No.21412 of 2014

Raj Narayan Paswan S/o Ram Autar Paswan, resident of village Bardaha,
P.S. Bardaha, District Araria.

..... Petitioner/s

Versus

1. The State of Bihar through the Collector, Araria.
2. The Collector, Araria.
3. The Sub Divisional Officer, Araria.

..... Respondent/s

with

Civil Writ Jurisdiction Case No.7615 of 2014

Md. Hasim Son of Late Sk. Nazamuddin, resident of village Kunjari, P.S.
Palasi, District - Araria.

..... Petitioner/s

Versus

1. The State of Bihar through the Collector, Araria.
2. The Collector, Araria.
3. The Sub-Divisional Officer, Araria.

..... Respondent/s

with

Civil Writ Jurisdiction Case No.19225 of 2014

Smt. Devaki Devi @ Devaki Devi W/o Santosh Kr. Bishwas, resident of
Village - Pategana, P.S. - Tarabari, District- Araria.

..... Petitioner/s

Versus

1. The State of Bihar through the Collector, Araria.
2. The Collector, Araria.
3. The Sub-Divisional officer, Araria.

..... Respondent/s

with

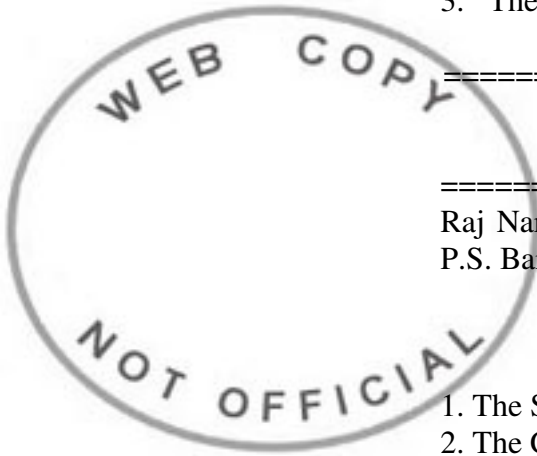
Civil Writ Jurisdiction Case No.18 of 2014

Sumitra Devi W/O Mahendra Pd. Manjhi, resident of Village Gyaspur, P.S.
Palasi, District - Araria

..... Petitioner/s

Versus

1. The State of Bihar through the Collector, Araria



2. The Collector, Araria
3. The Sub-Divisional Officer, Araria

.... Respondent/s

Appearance:

(In CWJC No.389 of 2015)

For the Petitioner/s : Mr. Ajay Kumar, Advocate

For the Respondent/s : Mr. Shivendra Kishore, AAG-7

(In CWJC No.1542 of 2015)

For the Petitioner/s : Mr. Md. Ziaul Quamar

For the Respondent/s : Mr. S.K. Sinha, G.P. 15

(In CWJC No.19170 of 2014)

For the Petitioner/s : Mr. Md. Ziaul Quamar

For the Respondent/s : Mr. Avinash Kumar, SC-30

(In CWJC No.19332 of 2014)

For the Petitioner/s : Mr. Md. Ziaul Quamar

For the Respondent/s : Mr. Vivek Prasad, GP-18

(In CWJC No.16533 of 2014)

For the Petitioner/s : Mr. Sanjay Kumar Sharma

For the Respondent/s : Mr. Anjani Kumar, AAG-6

(In CWJC No.21412 of 2014)

For the Petitioner/s : Mr. Sanjay Kumar Sharma

For the Respondent/s : Mr. Sc25- Arvind Ujjwal

(In CWJC No.7615 of 2014)

For the Petitioner/s : Mr. Sanjay Kumar Sharma

For the Respondent/s : Mr. Nasim Yahya, GP-13

(In CWJC No.19225 of 2014)

For the Petitioner/s : Mr. Sanjay Kumar Sharma

For the Respondent/s : Mr. S. Raza Ahmad, AAG-9

(In CWJC No.18 of 2014)

For the Petitioner/s : Mr. Sanjay Kumar Sharma

For the Respondent/s : Mr. Santosh Kumar Jha

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL ORDER

3 20-02-2015 Although a motion slip was also given in respect of CWJC No. 16660 of 2014 claiming to be a matter arising from E.C. Act and had been directed to be listed as such today but the Office reports that the said writ petition does not arise from E.C. Act and thus has not been listed.

The report of the Office is accepted.

Office further reports that CWJC No. 19225 of 2014 has been incorrectly mentioned as such when the correct number is

CWJC No. 19925 of 2014 and the correct writ petition has been listed today.

The report of the Office is accepted.

Reg: (5) CWJC No. 16533 of 2014

Counsel for the parties are present.

Mr. Sanjay Kumar Sharma, counsel for the petitioner seeks permission to withdraw the writ petition.

As prayed, the writ petition is dismissed as withdrawn.

Reg: (6) CWJC No. 21412 of 2014; (7) CWJC No. 7615 of 2014; (8) CWJC No. 19225 of 2014; and (9) CWJC No. 18 of 2014

On the request of learned counsel appearing on behalf of the petitioners, the matter is passed over to be taken up on Monday i.e. 23.02.2015.

Reg: (1) CWJC No. 389 of 2015; (2) CWJC No. 1542 of 2015; (3) CWJC No. 19170 of 2014; and (4) CWJC No. 19332 of 2014

Heard learned counsel for the petitioners and learned counsel for the State in the batch of these writ petitions.

With the consent of the parties the writ petitions have been taken up with a view to their final disposal at the stage of admission itself.

Since the issues raised in all these writ petitions are identical hence they have been taken up for hearing and disposal



side by side. All the petitioners in the writ petitions in question are holding licences for running a shop under the Public Distribution System issued under the Bihar Trade Articles (Licences Unification) Order, 1984 (hereinafter referred to as the 'Unification Order'). In all the cases the licences of all these petitioners were cancelled by the licensing authority i.e. the Sub-Divisional Officer inter alia on grounds of non-approval of their licences by the District Selection Committee and the appeal preferred by these petitioners after being considered by the appellate authority i.e. the District Magistrate, the cases were remanded for fresh consideration by the licensing authority for grant of fresh licence if the holders of licence fulfilled all eligibility criteria. However no order has been passed after remand. Identical orders of cancellation and remand are subject matters of these writ petitions and hence they are being disposed of by a common order. The individual details of the writ petitioners are as follows:

(1) CWJC. No. 389 of 2015

The licence of the petitioner bearing Licence No. 25J of 2007 was cancelled by the Sub-Divisional Officer, Araria vide order passed on 20.12.2007 and the appeal against the said order preferred by the petitioner bearing Appeal Case No.244 of 2007-08 was disposed of by the District Magistrate-cum-Collector, Araria vide order passed on 12.2.2008.

(2) CWJC No. 1542 of 2015

The licence of the petitioner bearing Licence No.20J of 2007 was cancelled by the Sub-Divisional Officer, Araria vide order passed on 20.12.2007 and the appeal against the said order preferred by the petitioner bearing Appeal Case No.204 of 2007-08 was disposed of by the District Magistrate-cum-Collector, Araria vide order passed on 12.2.2008.

(3) CWJC No.19170 of 2014

The licence of the petitioner bearing Licence No.65 of 2007 was cancelled by the Sub-Divisional Officer, Araria vide order passed on 20.12.2007 and the appeal against the said order preferred by the petitioner bearing District Appeal No.205 of 2007-08 was disposed of by the District Magistrate-cum-Collector, Araria vide order passed on 12.2.2008.

(4) CWJC No. 19332 of 2014

The licence of the petitioner bearing Licence No.11R of 2007 was cancelled by the Sub-Divisional Officer, Araria vide order passed on 20.12.2007 and the appeal against the said order preferred by the petitioner bearing Appeal Case No.14 of 2007-08 was disposed of by the District Magistrate-cum-Collector, Araria vide order passed on 12.2.2008.

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



It is an admitted position that the licences of all these petitioners were granted under the 'Unification Order' and which vests the Sub-Divisional Officer with powers to grant licences. There was no stipulation in the Unification Order regarding seeking approval of the District Level Committee. The Central Government had issued a Public Distribution System (Control) Order, 2001 for regulating the licence issued under the Public Distribution System. However the same was notified in the State of Bihar vide GSR dated 20.2.2007 under the nomenclature of Fair Price Shop Order, 2007. Clause-2 of the Fair Price Shop Order, 2007 requires the District Level Committee to approve the licences recommended by the licensing authority i.e. the Sub-Divisional Officer but while making such stipulation, the order in Clause-2 also saves all such licences which were issued prior thereto. It is not in dispute that the licences were issued under the 'Unification Order' and by virtue of Clause-2 of the Fair Price Shop Order, 2007 the licences issued by the licensing authority under the provisions of the 'Unification Order' stood saved.

Perusal of the order of cancellation passed by the licensing authority as impugned in the writ petition manifests that even when there are no complaints as regarding functioning of these petitioners nor they have been found allegedly violating the conditions of licences, yet the licences have been cancelled solely on the ground of lack of approval by the District Level

Committee.

The stand of the State in support of these impugned orders is relying upon some circular dated 31.8.2006 requiring an approval by the District Level Committee. Thus even when the 'Unification Order' did not contain any such stipulation requiring approval by the District Level Committee, such requirement which is foreign to the stipulations was sought to be introduced through a departmental circular and it is in the light of these departmental circulars that the orders impugned have been passed. The orders impugned on the face of it are illegal and cannot be upheld.

These very issues fell for consideration in a case arising from **CWJC No.14525 of 2008 (Ravi Shankar Mishra vs. The State of Bihar)** and a coordinate Bench of this Court vide judgment and order passed on 4.11.2011 taking note of the stipulations as existing on the date under the 'Unification Order' and taking note of the fact that there was no such stipulation in the 'Unification Order' requiring approval by the District Level Committee was pleased to set aside the order of cancellation of licences. The order of learned Single Judge was tested by the State in L.P.A No.292 of 2013 and which also was dismissed vide judgment and order passed on 14.3.2013. In view of the law settled by this Court which has attained finality, there leaves no room for confusion that the orders impugned in the respective writ petitions cannot be upheld and order of cancellation of licences as

well as the order passed in appeal by the appellate authority as impugned in the respective writ petitions cannot be upheld and are accordingly set aside.

The writ petitions are allowed. The licences of the respective writ petitioners stands restored.

The consequences shall follow.

(Jyoti Saran, J)

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