

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11648 of 2014

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Birendra Prasad Thakur S/o Sri Surendra Prasad, resident of village-
Raghauli, P.S. - Bisfi, District - Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Food and Consumer Protection Department,
Govt. of Bihar, Patna.
3. The Joint Secretary, Food and Consumer Protection Department, Govt. of
Bihar, Patna.
4. The Collector, Madhubani.
5. The Sub-Divisional Officer, Benipatti, District - Madhubani.
6. The Block Supply Officer, Bisfi Prakhand, District - Madhubani.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Murari Narain Chaudhary, Advocate
Mr. Vijay Kumar, Advocate
For the Respondent/s : Mr. Devendra Kr Sinha, AAG-2
Mr. Alok Kumar Rahi, AC to AAG-2

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

4 07-04-2015 Heard Mr. Murari Narain Chaudhary, learned counsel
for the petitioner and Mr. Alok Kumar Rahi, Assisting Counsel to
AAG-2 for the State.

The petitioner is a dealer under the Public Distribution
System (Control) Order, 2001 as enforced in the State of Bihar
vide Bihar Fair Price Shop Order with effect from 20.2.2007
(hereinafter referred to as the 'Control Order'). The license of the
petitioner stands cancelled under the orders of the Licensing
authority-cum-Sub Divisional Officer, Benipatti, District-
Madhubani vide order bearing Memo No. 722 dated 19.10.2012
and stands affirmed by the appellate authority when the statutory

appeal preferred by the petitioner bearing Supply Case No. 86 of 2012-13 was dismissed vide order passed on 24.4.2014 by the District Magistrate, Madhubani. The orders impugned are placed at Annexure- 1 & 2 to the writ petition and the petitioner being aggrieved is before this Court.

Mr. Chaudhary, learned counsel appearing on behalf of the petitioner submits that the orders impugned are unsustainable on the following grounds:

- (a) Neither the enquiry report nor the statement of the complainant was supplied to the petitioner; and
- (b) The order of the licensing authority has been passed in consideration of the unamended provisions of the 'Control Order' which stood amended on 23.6.2011 when several provisions of Clause-7 were modified and also deleted.
- (c) The order of cancellation has been passed without notice of proposed cancellation as provided under Clause 7(ii) of the Order which stood amended on 23.6.2011 i.e. prior to the passing of the order of cancellation.

Although the argument of Mr. Chaudhary is sought to be contested by Mr. Rahi, learned State counsel who with reference to Annexure-B of the counter affidavit has stated that a show cause was indeed issued to the petitioner on 28.8.2012



which was followed by a second show cause notice dated 19.9.2012 but whereas the show cause notice dated 28.8.2012 is not on record the subsequent notice dated 19.9.2012 only required the petitioner to submit his explanation by appearing in person and to also give his defence in response to the allegations. Clause-7 of the Control Order as it stood prior to amendment also did envisage a service of notice against proposed cancellation in sub-clause (iv) but since after the amendment in the Control Order dated 23.6.2011, the amended provisions of Clause-7(ii) of the Control Order reads as follows:

“7(ii) If any licensee contravenes any provision or any terms and conditions of license or any of his duties and responsibilities or any order of State Government then without prejudice to any other action that may be taken against him under the Essential Commodities Act, 1955 (Central Act of 1955), his license may be cancelled by the Licensing Authority by written order.

No order of cancellation shall be made under this clause unless the licensee has been given a reasonable opportunity stating its case against the proposed cancellation. The similar matter shall be disposed of by the Licensing Authority within a month.”

The notice present at Annexure-B does not satisfy this essential requirement. A perusal of the impugned order of cancellation manifests that the licensing authority was neither aware of the amendment introduced in the Control Order dated 23.6.2011 nor while reproducing the unamended provision of Clause-7, was he aware of sub clause (iv).

On this limited ground the order of cancellation passed by the licensing authority dated 19.10.2012 together with its confirmation in the appellate order dated 24.4.2013 cannot be upheld and are accordingly set aside. The license of the petitioner is restored.

This order however would not preclude the respondent authorities to proceed against the petitioner afresh after following the procedure required under amended Clause-7 of the Control Order and after giving all the documents on which the authorities seek to rely for proceeding against him.

The writ petition is allowed.

(Jyoti Saran, J)

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