

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15152 of 2014

Pahari Sah, son of Late Bhagwat Sah, resident of Village- Banauli, P.O.- Banauli, P.S.- Simri, District- Darbhanga.

.... Petitioner/s

Versus

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

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 15191 of 2014

Vijay Kumar Paswan @ Vijay Paswan, son of Late Keshwar Paswan, resident of Village- Banauli, P.O.- Banauli, P.S.- Simri, District- Darbhanga.

.... Petitioner/s

Versus

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

.... Respondent/s

With

Civil Writ Jurisdiction Case No. 15707 of 2014

Nafees Ahmad Khan, son of Late Nazeer Ahmad Khan, resident of Village- Bastwara, P.O. - Bastwara, P.S. - Simri, District - Darbhanga.

.... Petitioner/s

Versus

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

.... Respondent/s

With

Civil Writ Jurisdiction Case No. 15328 of 2014

Smt. Niro Devi, wife of Sri Pradeep Paswan, resident of Village- Madhopur, P.O.- Banauli, P.S.- Simri, District-Darbhangha.

.... Petitioner/s

Versus

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

.... Respondent/s

Appearance :**(In CWJC No. 15152 of 2014)**

For the Petitioner/s : Mr. Rajeev Kumar Labh
 For the Respondent/s : Mr. Saroj Kumar Sharma, AC to AAG-5

(In CWJC No. 15191 of 2014)

For the Petitioner/s : Mr. Rajeev Kumar Labh
 For the Respondent/s : Mr. Jawahar Prasad Karn, AAG-4

(In CWJC No. 15707 of 2014)

For the Petitioner/s : Mr. Rajeev Kumar Labh
 For the Respondent/s : Ms. Divya Verma, AC to AAG-3

(In CWJC No. 15328 of 2014)

For the Petitioner/s : Mr. Rajeev Kumar Labh
 For the Respondent/s : Mr. D.K.Sinha, AAG-2.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**ORAL JUDGMENT****Date: 15-05-2015**

Heard Mr. Rajeev Kumar Labh, learned counsel appearing on behalf of the petitioners in all the writ petitions and the learned State Counsel appearing in the respective writ petitions.

Since the complainants are the same in all the writ petitions and on the basis of a common enquiry report that the orders impugned in these writ petitions have been passed, it is taking note of the same that all these writ petitions have been heard together and are being disposed of by this common judgment.

The individual details of each of the cases are as follows:

Re: CWJC No.15152 of 2014:

In this case the petitioner is aggrieved by the order bearing Memo No.1110 dated 12.7.2013, whereby the Licensing Authority –cum- Sub-Divisional Officer, Sadar Darbhanga has



cancelled the licence of the petitioner bearing No.19 of 2007 issued under the Public Distribution System (Control) order, 2001 as enforced vide Fair Price Shop Order, 2007 (hereinafter referred to as 'the Control Order') and order passed by the appellate authority i.e. the District Magistrate, Darbhanga dated 31.7.2014 in Misc. Case No.143 of 2013 whereby the order of cancellation has been affirmed by the Appellate Authority. Copies of the cancellation order and the appellate order are present at Annexure-1 and 14 respectively to the writ petition.

Re: CWJC No.15191 of 2014:

In this case the petitioner is aggrieved by the order bearing Memo No.1111 dated 12.7.2013, whereby the Licensing Authority –cum- Sub-Divisional Officer, Sadar Darbhanga has cancelled the licence of the petitioner bearing No.25 of 2007 issued under 'the Control Order' and order passed by the appellate authority i.e. the District Magistrate, Darbhanga dated 31.7.2014 in Misc. Case No.142 of 2013 whereby the order of cancellation has been affirmed by the Appellate Authority. Copies of the cancellation order and the appellate order are present at Annexure-1 and 14 respectively to the writ petition.

Re: CWJC No.15707 of 2014:

In this case the petitioner is aggrieved by the order bearing Memo No.1113 dated 12.7.2013, whereby the Licensing



Authority –cum- Sub-Divisional Officer, Sadar Darbhanga has cancelled the licence of the petitioner bearing No.07 of 2007 issued under ‘the Control Order’ and order passed by the appellate authority i.e. the District Magistrate, Darbhanga dated 31.7.2014 in Misc. Case No.146 of 2013 whereby the order of cancellation has been affirmed by the Appellate Authority. Copies of the cancellation order and the appellate order are present at Annexure-1 and 14 respectively to the writ petition.

Re: CWJC No.15328 of 2014:

In this case the petitioner is aggrieved by the order bearing Memo No.1114 dated 12.7.2013, whereby the Licensing Authority –cum- Sub-Divisional Officer, Sadar Darbhanga has cancelled the licence of the petitioner bearing No.17 of 2007 issued under ‘the Control Order’ and order passed by the appellate authority i.e. the District Magistrate, Darbhanga dated 31.7.2014 in Misc. Case No.145 of 2013 whereby the order of cancellation has been affirmed by the Appellate Authority. Copies of the cancellation order and the appellate order are present at Annexure-1 and 14 respectively to the writ petition.

Learned counsel for the petitioner has questioned the orders impugned on the following grounds :

- (a) The complainant in the present cases is a political activist who is not connected with the shops of the

respective writ petitioner(s);

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- (b) The Deputy Director had no jurisdiction to proceed in the matter or to hold enquiry which jurisdiction entirely rests in the Licensing Authority as per Clause-3 of 'the Control Order';
- (c) The order of cancellation has been passed mechanically on the basis of the enquiry report submitted by the Deputy Director and the joint enquiry report of the Block Supply Officer, Hanuman Nagar, Sub-Election Officer, Sadar, Darbhanga and the Senior Deputy Collector, Sadar Darbhanga who have no jurisdiction under the provisions of 'the Control Order' to hold enquiry and thus it is an abdication of statutory duty by the Licensing Authority;
- (d) The show cause notice issued to the petitioners against the proposed cancellation dated 28.5.2013 placed at Annexure-10 to the respective writ petitions, is vague inasmuch as it does not specify the allegations; and
- (e) Copy of the enquiry report was never given to the writ petitioner(s).

Learned counsel for the petitioners with reference to a judgment of this Court passed in the case of **Santosh Kumar Ram**

@ **Santosh Ram vs. The State of Bihar** arising from CWJC No.489 of 2014 submits that identical issues having been raised before this Court, the grievance of the writ petitioner was upheld and the orders passed were held unsustainable.

Although the issues raised have been sought to be contested by the respondents by filing counter affidavit(s) but the specific issues raised by the petitioners remain unanswered. In fact the respondents cannot justify the role of the Deputy Director in the matter or for that matter any enquiry conducted by a team, unrecognized under 'the Control Order'.

This Court is in complete agreement with the issues raised by Mr. Labh, learned counsel appearing for the petitioners. The issues raised in the present batch of cases cannot be answered by the respondents and is squarely covered by the judgment of this Court rendered in the case of **Santosh Kumar Ram** (supra) wherein this Court has held that:

- (a) no enquiry can be initiated on a complaint of a political activist especially when he is not a consumer with the petitioner(s);
- (b) the Deputy Director has no jurisdiction under 'the Control Order' to either hold enquiry or to seek any show cause from the petitioner(s);
- (c) the show cause notice has been mechanically issued

by the Licensing Authority and is absolutely vague with no specific details;

- (d) the illegality is perpetuated in the order of cancellation which entirely rests upon the enquiry conducted by a body who has no jurisdiction under 'the Control Order' to carry out any such enquiry.

Clause-3 of 'the Control Order' is conclusive of the fact that it is the licensing authority alone who has jurisdiction and has been conferred with the duties and responsibilities in respect of suspension and cancellation of licence of a fair price shop dealer and which jurisdiction cannot be delegated to any other authority howsoever high he may be.

For the reasons aforementioned the orders impugned in all the respective writ petitions are held unsustainable and are accordingly set aside.

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

(Jyoti Saran, J)

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