

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.728 of 2015

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Vimalesh Kumar Mishra S/o- Rama Shankar Mishra, the Proprietor of M/S. Kiran Traders, R/o -village and P.O.- Dheng, P.S. - Majorganj, Block, Suppi, Distt. - Sitamarhi.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Agriculture Dept, Govt. of Bihar, Patna.
3. The Distt. Agriculture Officer, Sitamarhi, Distt. - Sitamarhi.
4. The Sub-Divisional Agriculture Officer, Sitamarhi, Sadar, District– Sitamarhi.
5. The Block Agriculture Officer, Suppi, Distt. - Sitamarhi.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Pushpendra Kumar Singh, Advocate

For the Respondent/s : Mr. S.A. Alam, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

5 21-04-2015 Heard Mr. Pushpendra Kumar Singh, learned counsel for the petitioner and learned counsel for the State.

The petitioner has questioned the order dated 28.09.2013 passed by the District Agriculture Officer, Sitamarhi whereby the petitioner has been directed to show cause against cancellation of the license granted to him for trading in fertilizers under the provisions of the Fertilizer Control Order, 1985 (hereinafter referred to as 'the Control Order') and by the same order the license of the petitioner has been suspended. The order was passed on 28.9.2013 and it is after a delay of almost 15 months that this petitioner came before this Court complaining that no final order has been passed and that the dealership of the petitioner remains

suspended under the order dated 28.9.2013.

A counter affidavit has been filed by the District Agriculture Officer enclosing the letter bearing No. 2089 dated 27.10.2013 whereby the license of the petitioner has been cancelled on his failure to reply against the charges of black marketing set out against him in the show cause. The order of suspension placed at Annexure-5 and the cancellation order placed at Annexure-A reflect that on allegation of black marketing that a police case has been instituted against the petitioner giving rise to Majorganj P.S. Case No. 198 of 2013. It is not in dispute that the criminal case charging the petitioner with black marketing dealing in fertilizer remains pending before the criminal court.

Counsel for the petitioner has submitted that the order of cancellation has not been communicated to the petitioner and it is in these circumstances that the writ petition though filed in December, 2014, did not impugn the cancellation order as it was not within the knowledge of the petitioner.

Having heard learned counsel for the parties and taking note of the circumstances that the Dealership Licence of the petitioner granted under 'the Control Order' was initially suspended vide order passed on 28.9.2013 placed at Annexure-5 to be finally cancelled under order dated 17.10.2013 placed at Annexure-A to the counter affidavit is founded on the institution

of the criminal case arising from Majorganj P.S. Case No. 198 of 2013 which remains pending for adjudication before the criminal court as well as taking note of the fact that the order of cancellation is appealable before the Joint Director of Agriculture, Tirhut Division, Muzaffarpur which has been notified by the Department of Agriculture vide memo bearing no. 2883 dated 18.8.2003 as informed by the respondent vide paragraph-17 of the counter affidavit, this writ petition is disposed of affording liberty to the petitioner to exhaust the alternative remedy of appeal so available to him.

Taking into consideration the submission made on behalf of the petitioner that the order of cancellation was not communicated to the petitioner, it is directed that if the petitioner prefers any statutory appeal within 30 days from today before Joint Director of Agriculture, Tirhut Division, Muzaffarpur, the same would be considered and disposed of on its own merit in accordance with law and after opportunity of hearing to the petitioner.

(Jyoti Saran, J)

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