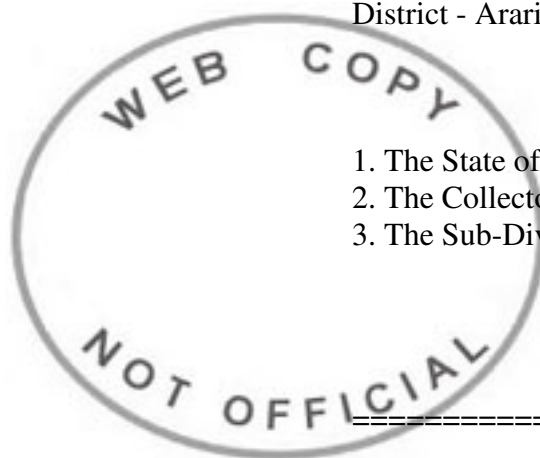




**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.7615 of 2014**

=====

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. 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

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**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

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**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. 7615 of 2014)**

For the Petitioner/s : Mr. Sanjay Kumar Sharma, Advocate

For the Respondent/s : Mr. NASIM YAHYA, GP-13

**(In CWJC No. 21412 of 2014)**

For the Petitioner/s : Mr. Sanjay Kumar Sharma, Advocate

For the Respondent/s : Mr. ARVIND UJJWAL, SC-25

**(In CWJC No. 19225 of 2014)**

For the Petitioner/s : Mr. Sanjay Kumar Sharma, Advocate

For the Respondent/s : Mr. S. RAZA AHMAD, AAG-9

Mr. Md. Anisul Haque, A.C. to AAG-9

**(In CWJC No. 18 of 2014)**

For the Petitioner/s : Mr. Sanjay Kumar Sharma, Advocate

For the State-Respondent/s: Mr. Satyendra Kumar Jha, A.C. to G.P.-3

**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**

**ORAL JUDGMENT**

**Date: 26-02-2015**

Since the issues raised are common in these writ petitions hence they have been taken up together for consideration and final disposal at this stage itself.

A counter affidavit has been filed in CWJC No. 18 of 2014. Although no counter affidavit has been filed in other writ petitions but this Court taking into consideration the fact that these four petitions are also amongst the 329 licensees of the District of Araria whose license for running a shop under the Public Distribution System had been cancelled on the sole ground of non-confirmation of their cases by the District Level Committee which issue stands concluded by a number of judgments of this Court beginning from the case of Ravi Shankar Mishra vs. State of Bihar arising from CWJC

No. 14525 of 2008 which was allowed on 4.11.2011 and which judgment was confirmed by the Division Bench in L.P.A. No. 292 of 2013, is of the opinion that awaiting a filing of a counter affidavit would be only a completion of formality.

A universal stand has been taken by the counsel appearing for the State that since the licenses of these petitioners though issued under the Bihar Trade Articles (Licenses Unification) Order, 1984 (hereinafter referred to as 'the Unification Order') but insofar as the petitioners in CWJC No. 7615 of 2014, CWJC No. 19225 of 2014 and CWJC No. 18 of 2014 are concerned, their licenses have been issued after 20.2.2007 i.e. the date on which the Public Distribution System (Control) Order, 2001 was enforced in the State of Bihar vide Bihar Public Fair Price Shop Order, 2007 hence they are not entitled to the same relief.

Learned counsel for the State has also raised an issue of delay but in my opinion whereas the appellate order required the licensing authority to consider the cases of the licensees for grant of fresh license which exercise was never undertaken and even when the judgment in the case of Ravi Shankar Mishra (supra) was passed as back as on 4.4.2011 when the law on the issue stood settled yet each of the identically situated 329 licensees in the District of Araria, had to approach this Court and individual orders have to be passed each time, the respondents cannot raise such objection nor these cases can

be taken out as exception.

In my opinion such objection is only taken to be rejected. Admittedly the licenses of these petitioners have been issued pursuant to an exercise undertaken under the provisions of the “Unification Order” and thus there is no distinction between the cases in hand and the cases which have been earlier disposed of by this Court.

All the petitioners in the writ petitions in question are holding licences for running a shop under the Public Distribution System issued under 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. 7615 of 2014**

The licence of the petitioner bearing Licence No. 9P 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.228 of 2007-08 was disposed of by the District Magistrate-cum-Collector, Araria vide order passed on 12.2.2008.

**(2) CWJC No. 21412 of 2014**

The licence of the petitioner bearing Licence No.2-S 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.198 of 2007-08 was disposed of by the District Magistrate-cum-Collector, Araria vide order passed on 12.2.2008.

**(3) CWJC No.19225 of 2014**

The licence of the petitioner bearing Licence No.25A 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. 93 of 2007-08 was disposed of by the District Magistrate-cum-Collector, Araria vide order passed on 12.2.2008.

**(4) CWJC No. 18 of 2014**

The licence of the petitioner bearing Licence No.11P 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. 96 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 existing. It is not in dispute that the licences were issued under the 'Unification Order'.

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.

S.Sb/-

**(Jyoti Saran, J)**

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