

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.279 of 2014

=====

Nand Lal Das, son of Late Rameshwar Das, resident of Village - Dorma, P.S. Aanti, Block-Konch, District – Gaya.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate, Gaya.
3. The District Development Commissioner, Gaya.
4. The Sub Divisional Officer, Konch.
5. The Circle Officer, Tikari, Gaya.
6. The Block Development Officer, Konch.
7. The District Programme Officer, Konch Block, Gaya.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : DR. Ratan Kumar

For the Respondent/s : Mr. S.K. Ranjan, AC to SC-15

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 05-05-2015

Heard Dr. Ratan Kumar, learned counsel appearing on behalf of the petitioner and learned counsel for the State.

The petitioner holds a licence bearing no.16/92 for running a fair price shop under the Public Distribution System (Control) Order, 2001 as enforced in the State of Bihar vide Fair Price Shop Order, 2007 (hereinafter referred to as ‘the Control Order’).

Following an enquiry report submitted by the Block Development Officer, Konch dated 28.7.2009 (Annexure-1) the licence of the petitioner has been cancelled under the orders of the Licensing Authority -cum-Sub-Divisional Officer, Tikari, District-Gaya vide order passed on 5.11.2009 placed at Annexure-2 and which order has been affirmed by the appellate authority who has

dismissed the appeal preferred by the petitioner bearing Supply Appeal No.112 of 2009 vide order passed on 20.5.2012.

Facts of the case briefly stated is that following an enquiry report of the Block Development Officer, Konch that the petitioner was served with a show cause notice issued by the Licensing Authority on 1.8.2009 charging him with the following alleged irregularities:

- (a) The shop was closed;
- (b) The petitioner had committed irregularities in distribution of ration and kerosene oil for the period June, 2008, November, 2008, December, 2008 and January, 2009 to May 2009; and
- (c) The consumers faced problems on account of continuous closure of the shop.

A copy of the show-cause notice dated 1.8.2009 is placed at Annexure-4 to the supplementary affidavit. The petitioner filed his reply vide Annexure-5 to the supplementary affidavit. The Licensing Authority -cum -Sub-Divisional Officer vide order passed on 21.10.2009 did not find the explanation satisfactory and by the same order suspended the licence of the petitioner while issuing second show cause against the cancellation. The petitioner again responded to the second show cause and by the impugned order passed on 5.11.2009 the Licensing Authority while not



commenting on the replies of the petitioner to the charges which find mentioned in the charge memo dated 1.8.2009, has recorded a finding that the petitioner has not filed any reply for non-supply of ration and kerosene oil for the period May 2009 to August, 2009 and has cancelled the licence. The order of cancellation stands affirmed by the appellate authority and hence this writ petition.

Two issues have been raised by Dr. Kumar, learned counsel appearing for the petitioner to question the impugned orders, namely:

- (a) The charge of irregularity in distribution of ration for the period May, 2009 to August, 2009 did not constitute any charge in the charge memo issued to the petitioner placed at Annexure-4 to the supplementary affidavit which was limited to irregularities in the distribution up to May, 2009 and not for the subsequent period. Thus the penalty is beyond the charge so framed; and
- (b) The petitioner having already suffered the penalty of suspension for the alleged irregularities which find mention the charge memo he could not be saddled with the second penalty in view of the law laid down by this Court in the case of **Shiv Chandra Jha Vs. Harideo Jha** reported in **2013(3) PLJR 956**.

The arguments have been contested by learned counsel for the State relying upon the counter affidavit but in so far as the issues so framed are concerned, the counter affidavit is silent.

I have heard learned counsel for the parties and I have perused the records.

The issue raised by the petitioner is indefensible for the charges, on which the cancellation order has been passed i.e. the irregularity in distribution of kerosene oil and ration from May, 2009 to August, 2009 do not find mention in the charge memo placed at Annexure-4, which merely charges the petitioner for irregularity only up to May, 2009 and not thereafter. Meaning thereby the penalty imposed is beyond the charge framed against the petitioner. Further, even in view of the law laid down by this Court in the case of **Shiv Chandra Jha** (supra) the petitioner having already suffered the penalty of suspension he could not have been saddled with the penalty of cancellation of his licence for the same offence.

For the reasons aforementioned the orders impugned cannot be upheld and are accordingly set aside.

The writ petition is allowed. The licence of the petitioner stands restored.

(Jyoti Saran, J)

SKPathak/-

U			
---	--	--	--