

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.489 of 2014

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Santosh Kumar Ram @ Santosh Ram, son of Late Ramdeo Ram, resident of
Village and P.O.- Narauchh Dham, P.S.- Jale, District- Darbhanga.

.... Petitioner/s

Versus

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

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajeev Kumar Labh

For the Respondent/s : Mr. Santosh Kumar, AC to GP-9

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 07-04-2015

Heard Mr. Rajeev Kumar Labh, learned counsel
appearing on behalf of the petitioner and Mr. Santosh Kumar,
learned Assisting Counsel to Government Pleader No.9 for the
State.

The petitioner is a licence-holder bearing Licence No.39
of 2007 for operating 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'). The petitioner is aggrieved by the order bearing Memo
No.2604 dated 24.11.2012 passed by the Licensing Authority cum-
Sub-Divisional Officer, Sadar, Darbhanga, whereby the licence of
the petitioner has been cancelled. The petitioner being aggrieved



filed a statutory appeal before the Collector –cum- District Magistrate, Darbhanga bearing P.D.S. Appeal Case No.200 of 2012 on 20.12.2012 and since the same was not being disposed of that he moved this Court through the present writ petition.

It is during the pendency of the writ petition that the appellate order has also been passed by the Collector –cum- District Magistrate, Darbhanga in P.D.S. Appeal Case No.200 of 2012 who vide order dated 26.6.2014 has dismissed the appeal and affirmed the order of cancellation. The order has been placed on record vide Annexure-1 to I.A. No. 5359 of 2014 and the petitioner seeks leave to question the same in the present writ petition which is allowed and consequently I.A. No.5359 of 2014 stands allowed and the petitioner is permitted to question the appellate order as well.

Mr. Labh, learned counsel appearing on behalf of the petitioner has submitted that the proceedings were initiated at the instance of one Md. Sanaullah stated to be a political activist who filed a complaint before the Deputy Director, Supply Division, Darbhanga on 11.9.2012, a copy of which is placed at Annexure-2 series to the writ petition alleging irregularities on the part of the petitioner and the Deputy Director without having regard to the statutory provisions and despite absence of jurisdiction, mechanically issued a show cause notice to the petitioner vide order



bearing Memo no.288 dated 13.9.2012 placed at Annexure-2 series. Since the petitioner is stated not to have responded to the notice that a second notice was again issued by the Deputy Director on 20.12.2012 placed at Annexure-3 and again since the petitioner did not respond that the Deputy Director made an enquiry and submitted the same to the Sub-Divisional Officer, Sadar Darbhanga, the Licensing Authority.

In between the Commissioner, Darbhanga Division, Darbhanga also proceeded on a report submitted by the Marketing Officer and since no explanation was given by the petitioner that the Commissioner recommended for cancellation of his licence and following the order the licence of the petitioner has been cancelled by the Licensing Authority –cum- Sub-Divisional Officer, Sadar Darbhanga vide order passed on 12.11.2012 as affirmed by the appellate authority vide order dated 26.6.2014 passed in P.D.S. Appeal Case No.200 of 2012 and the being aggrieved the petitioner is before this Court.

Mr. Labh, learned counsel appearing on behalf of the petitioner has raised the following issues to question the order impugned:

- (a) The complainant in this case is a political activist Md.

Sanaullah who is not a person aggrieved inasmuch as

he is not attached with the shop of the petitioner and thus he could not have raised the issue of irregularities nor the same could have been pursued at his instance;

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- (b) The Deputy Director had no jurisdiction to proceed in the matter or to seek any show cause from the petitioner which jurisdiction entirely vests in a Licensing Authority as per Clause-3 of 'the Control Order' and thus the proceeding stood vitiated from its very inception;
- (c) The order of cancellation has been passed by the Licensing Authority mechanically simply on the basis of a direction issued by the Commissioner which is an abdication of his statutory duty; and
- (d) There is no show cause to the proposed cancellation as envisaged under Clause 7(ii) of 'the Control Order'.

Although a counter affidavit has been filed on behalf of the respondents but they have simply taken refuge on the irregularities reported by Md. Sanaullah without appreciating whether he has any right to make a complaint and whether the Deputy Director was legally vested with any power to proceed therewith. In my opinion the issues raised by Mr. Labh have remained uncontested for there cannot be any two opinions that

there has been utter violation of statutory procedures.



The infirmities engulfing the present proceeding are too many. Firstly, Md. Sanaullah was not attached to the shop of the petitioner and thus he cannot be said to be an aggrieved consumer to lodge any complaint. Secondly, the Deputy Director is not vested with any jurisdiction to proceed on the complaint under the provisions of 'the Control Order'. Thirdly, 'the Control Order' in Clause-3 and Clause-7 completely empowers the Licensing Authority not only to issue licence but also to cancel the licence and which power cannot be delegated to any officer. The jurisdiction thus exercised by the Deputy Director in proceeding on the complaint was without sanction of law. Fourthly, there is no show cause notice issued by the Sub-Divisional Officer against a proposed cancellation of licence as mandated under Clause 7(ii) of 'the Control Order'. Fifthly, the order of cancellation has been passed mechanically on the direction of the Commissioner, Darbhanga Division, Darbhanga and thus the statutory exercise by the Licensing Authority stands influenced under the order of the superior authority and is not on the basis of independent exercise of mind.

There existing such numerous infirmities in the proceedings initiated against the petitioner which has led to the

cancellation of licence that it is a completion of formality for me to hold that the order of cancellation of licence and its approval by the appellate authority both are illegal, without sanction of law and has been passed mechanically without application of mind rather is an abdication of statutory responsibility.

In result the order of cancellation as contained in Annexure-1 to the writ petition together with the appellate order as contained in Annexure-1 to I.A. No.5359 of 2014 are set aside.

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

(Jyoti Saran, J)

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