

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17309 of 2014

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Kamini Devi W/o Manoj Paswan Resident of Village Banauli, Panchayat Banauli,
P.O. & P.S. Simari, District Darbhanga.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Food and Civil Supplies Department, Government of Bihar, Patna.
2. The Collector-cum-District Magistrate, Darbhanga.
3. The Senior Deputy Collector (Supply), Darbhanga.
4. The District Supply Officer, Darbhanga.
5. The Sub Divisional Officer-cum-Sub Divisional Supply Officer, Supply Division, Darbhanga, District Darbhanga.
6. The Block Supply Officer, Singhvara, District Darbhanga.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Rajeev Kumar Labh, Advocate

For the Respondent/s : Mr. Parijat Saurav, AC to AAG 10

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 17-11-2016

Heard Parties.

The petitioner challenges the order dated 12.7.2013 passed in Case No. 03/2013 by the Sub Divisional Officer – cum – licensing authority, Darbhanga by which licence No. 16/07 has been cancelled as well as the appellate order dated 31.7.2014 passed by the Collector – cum – District Magistrate, Darbhanga in Miscellaneous Case No. 144 of 2013, by which he has upheld the order passed by the licensing authority and dismissed the appeal. Both the orders stand appended as Annexure 1 series.

Petitioner assails the orders impugned on diverse



grounds. It is contended that no proceeding for initiation of licence of PDS dealer should have been initiated on the complaint made by the political activist. It is next contended that the Deputy Director, Food, Darbhanga Division was not authorized to get an inquiry held by the Marketing Officer of a PDS Shop as the same could only be done by the licensing authority as per Clause 3 of the PDS Control Order, 2001. Lastly, it is submitted that a copy of the report of the inquiry conducted by the team constituted by the licensing authority which was done on 26.4.2013, was never served upon the petitioner before taking any action for cancellation of licence and the specific statement in this regard has been made in paragraph nos. 5 and 6 of the writ petition.

The petitioner places reliance upon a decision of a Single Judge Bench of this court rendered in **C.W.J.C. No. 15152 of 2014 (Pahari Sah versus The State of Bihar & ors.) and other analogous matters**, a copy of which has been appended as Annexure 5 series, as well as a decision of **C.W.J.C. No. 489 of 2014 (Santosh Kumar Ram Vs. The State of Bihar)**.

A counter affidavit has been filed on behalf of the State. However, there is no specific denial of the statements made in paragraph nos. 5 and 6 of the writ petition that the copies of the inquiry reports were never served upon the petitioner. Thus, it has to



be understood that there is no denial and State admits this fact that the copy of the inquiry report was never served.

So far the aforesaid issues are concerned the same has already having been considered and decided in **Santosh Kumar Ram (supra)** as well as decisions contained in Annexure 5. This Court is also in agreement with the views taken by the learned Single Judge in both the cases and it is 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.
- e. It is further held that it is the licensing authority upon him alone the jurisdiction has been conferred with certain rights, duties and responsibility with respect to cancellation of licence and such jurisdiction cannot be delegated to any other authority and at the



same time he has also to apply his own mind and not proceed under the dictate of any superior authority.

As a result this writ application stands allowed. The impugned orders contained in Annexure 1 series are quashed and set aside being unsustainable in eye of law. The licence of the petitioner stands restored and he is entitled for immediate resumption of supply.

(Dr. Ravi Ranjan, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.01.2017
Transmission Date	NA

