

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22188 of 2014

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Mamta Devi Wife of Sri Amod Jha resident of village Phulkahi, P.O. and P.S. Raiyam, District Darbhanga.

.... Petitioner

Versus

1. The State of Bihar through Secretary, Food and Consumer Protection Department, Bihar, Patna.
2. The Commissioner, Darbhanga.
3. The Collector, Darbhanga.
4. The Licensing Officer-cum-Sub-Divisional Officer, Sadar, Darbhanga.
5. The Block Supply Officer cum Circle Officer, Keoti.
6. The Circle Officer, Keoti.

.... Respondents

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Appearance :

For the Petitioner : Mr. Kaushalesh Choudhary, Advocate
For the Respondent/s : Mr. Naresh Prasad, AC to SC20

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 09-02-2016

Heard learned counsel for the petitioner and the State.

Petitioner seeks quashing of the order dated 8.11.2014 passed by the Sub Divisional Officer – cum – licensing authority, Sadar Darbhanga by which his PDS licence no. 21 of 2007 has been cancelled.

Sole ground raised on behalf of the petitioner is that the dismissal is on the ground of first information report lodged against the petitioner under Section 7 of the Essential Commodities Act, 1955 (hereinafter referred to as ‘the Act’). It is contended that there is no provision under the statute for cancellation on such

ground.

Per contra learned counsel appearing for the State submits that vide Annexure 2 earlier a notice was given setting out some charges against the petitioner also.

However, from perusal of Annexure 2 also it does not appear that it was a notice for a proposed cancellation. That apart, it is apparent from the impugned order as contained in Annexure 16 that only one show cause notice vide memo no. 1002 dated 24.10.2014 has been considered which has been appended as Annexure 13 which reflects in clear terms that the same was being issued for the cancellation of licence on the ground of first information report lodged against the petitioner under section 7 of the Act.

It is by now well settled that there can be no cancellation of PDS licence on such ground. There are only two provisions for cancellation of PDS licence under the Public Distribution System (Control) Order 2001 (hereinafter referred to as 'the Control Order'). First is Clause 7(ii) of the Control Order under which the licensee is required to be issued a show cause notice for cancellation on the ground of alleged irregularities committed by him. If he has violated the terms and conditions of the licence and the provisions of the Act, such action is in addition



to the action which may be taken by the competent authority under the Act. However, for doing that a show cause notice is must setting out charges. If the allegation is based upon complaints made by beneficiaries or any inquiry done by the competent authority then copies of those would also have to be supplied. Thereafter, the licensee would be granted time for filing a reply and after considering such reply a decision could be taken for cancellation of licence. Second provision for cancellation of licence is under Clause 14 of the Control Order, i.e., in case there is conviction of the petitioner under Section 7 of the Act then the licensing authority would be required to cancel the licence of the petitioner by a written order having been passed in this regard.

From perusal of Annexure 13 it does not appear that a notice under Clause 7(ii) of the Control Order has been issued and as such the impugned order having been passed on the basis of the content of the allegation under Annexure 13, cannot be allowed to survive as the same would not be sustainable in law.

Accordingly, the impugned order as contained in Annexure 16 is quashed and set aside.

However, the authority concerned, if it so desires, would be at liberty to issue a fresh show cause notice for the irregularities committed by the petitioner, if any, in accordance

with law and, thereafter, may take a decision on its own merit and in accordance with law after granting reasonable opportunity to the petitioner.

(Dr. Ravi Ranjan, J)

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