

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19473 of 2012

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1. M/S Khusbu Khad Beej Bhandar, a Proprietary Concern, having its place of business at Village Kuwari, P.S. Kursakantha, District Araria through its Proprietor Deepak Kumar Sah, son of Sri Balram Prasad Sah, resident of Village- Kuwari, P.S.- Kursakantha, District- Araria.

2. M/S Upjao Khad Beej Bhandar, a Proprietary Concern, having its place of business at Village Kuwari, P.S. Kursakantha, District- Araria through its Proprietor Jitendra Goswami, son of Sri Lakhmi Goswami, resident of Village- Kuwari, P.S. Kursakantha, District- Araria.

3. M/S Khusi Khad Beej Bhandar, a Proprietary Concern, having its place of business at Village Kuwari, P.S. Kursakantha, District- Araria through its Proprietor Arun Kumar Sah, son of Late Moti Lal Sah, resident of Village- Kuwari, P.S.-Kursakantha, District- Araria.

.... Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Government of Bihar, Main Secretariat, Patna

2. The Principal Secretary cum Agriculture Production Commissioner Government of Bihar, Patna

3. The District Magistrate, Araria

4. The Superintendent of Police, Araria

5. The District Agriculture Officer, Araria

6. The Officer In-Charge, P.S. Kursakantha, District- Araria

.... Respondents

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Appearance:

For the Petitioners : Mr. Gautam Kejriwal, Advocate
Ms. Aishwarya Riti, Advocate

For the Respondents : Mr. Naman Nayak, AC to AAG 10

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 27-09-2016

Heard learned counsel for the petitioners and learned
counsel for the respondents.

2. The present writ petition has been filed for quashing the order contained in memo no. 3365 dated 17.09.2012 issued by the Superintendent of Police, Araria and communicated to the petitioner vide memo no. 1797 dated 22.09.2012 issued by the District Agricultural Officer, Araria, in terms of the letter dated 04.09.2012 bearing memo no. Sta/Nepal/2012, 7906 issued by the Joint Secretary,

Department of Home, Government of Bihar, Patna, communicating the decision dated 24.08.2012 taken in a meeting under chairmanship of the Principal Secretary, Department of Home, Government of Bihar, Patna wherein restrictions have been imposed under the Fertilizer Control Order on the existence of godowns within 5 km from the international border; and for connected reliefs.

3. Learned counsel for the petitioner submits that the minutes of the meeting dated 04.09.2012, as well as the consequential order dated 17.09.2012 (Annexure 2 series) passed by Superintendent of Police, Araria directing, *inter alia*, that no licence holder would now be permitted to keep a godown within a distance of 5 km from the border, and that strict action would be taken against the defaulters, are wholly arbitrary and without jurisdiction.

4. It is submitted that any such restriction could only be imposed by the Central Government through notification in the Official Gazette as contemplated in Section 3(1) and Section 3(5) of the Essential Commodities Act, 1955. It is submitted that the issue is squarely covered by an order of a co-ordinate Bench of this Court in the case of *New Balaji Fertilizer and Ors., vs. The State of Bihar and Anr.*, 2008(2) PLJR 395, wherein similar orders passed by the District Agricultural Officer, Araria, prohibiting persons from doing business in fertilizer within 2 km of the Indo-Nepal border were quashed.

5. Learned counsel for the respondents relies on the counter affidavit to oppose the writ petition. However, apart from justifying the

necessity for imposing the restrictions, the stand of the petitioner questioning the jurisdiction of the State officials to impose the restrictions in question, has not been controverted.

6. Having heard the parties and on a careful consideration of the materials on record, this Court finds merit in the writ petition. In view of the provisions of Section 3 of the Essential Commodities Act, it is clear that it is the Central Government alone which is competent to impose restrictions of the nature sought to be done by the impugned orders, and the impugned orders passed by the State Officials are thus un-authorized in law. Learned counsel for the respondents has also not been able to satisfy this Court that the decision in the case of *New Balaji Fertilizer (supra)* is not applicable in the present case. The mere fact that the reported decision deals with a case imposing restrictions on carrying on of business whereas the present case prohibits the maintenance of godowns in the Indo-Nepal border areas, makes little difference and the two cases cannot be distinguished on that score.

7. In the above circumstances, the impugned orders as contained in the memos dated 17.09.2012 and 22.09.2012 (Annexure 2 series) are hereby quashed and the writ petition stands allowed.

Chandran/BT

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	04.10.2016
Transmission Date	N.A.

(Vikash Jain, J)