IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13280 of 2014

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Ganga Ram Yadav Son of Late Bal Govind Yadav Resident of Village - Dahipura, P.O. - Samaila Lalganj, P.S. - Keoti, District - Darbhanga.

.... Petitioner

Versus

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

.... Respondents

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Appearance :

For the Petitioner : Mr. Rajeev Kumar Labh, Advocate
For the Respondent/s : Mr. Ashok Priyadarshi, G.A.4
: Mr. Sanjay Sinha, A.C. to G.A. 4

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL ORDER

5 19-01-2016 Heard learned counsel for the petitioner and the State.

The petitioner, on an earlier occasion, had challenged the Annexure-1 dated 21.09.2012 passed by the Sub-Divisional Officer, Darbhanga on diverse grounds by filing CWJC No. 9673 of 2013. However, since order of cancellation was passed during the pendency, the writ petition was disposed of granting liberty to the petitioner to assail the order of cancellation before a competent forum. Hence, this writ petition has been filed.

One of the question raised is that the order of cancellation has been passed without issuing any show cause notice in contemplation of a proceeding for proposed cancellation of his licence, thus, it is in violation of Clause 7 (ii) of the Public

Distribution System (Control) Order, 2001 which mandates that no order of cancellation can be passed without granting any reasonable opportunity.

It is next contended that from bare perusal of the impugned order dated 16th of September, 2013 as contained in Annexure-1 series, it appears that the licence has been cancelled under Clause 7 (iii) of the aforesaid Control Order though the fact is that the aforesaid provision was already deleted by an amendment brought vide Notification No. Pra. 04/vi-02-04/2001-5738 dated 23.06.2011. Even the provision contained in clause (iii), which was existing before the amendment, merely contemplates suspension of licence during the pendency of a case in which FIR has been lodged against any dealer for contravention of Order issued under the Essential Commodities Act, 1955 but there was no provision for cancellation of licence even if a Criminal case was pending under Essential Commodities Act.

In my view, this application has to succeed on both counts. For taking a decision to cancel the licence of the PDS dealer, a show cause notice contemplating such action would be required. If the notice does not disclose in clear terms that it is being issued for cancellation of licence then it has to be declared as vague and in violation of the mandatory provisions contained in

Clause 7 (ii) because it cannot be held in such a situation that adequate opportunity was granted to the petitioner for stating his case before cancellation.

Secondly, there is no provision under the Control Order for cancellation of licence if F.I.R. has been lodged against the petitioner under the provision for contravention of Order issued under Essential Commodities Act, 1955 (hereinafter referred to "as the act"). There are two modes only under which a licence can be cancelled. One is under Clause 7 (ii) of the Control Order as stated above and the second one is under Clause 14 which provides that in case of conviction of the licensee for contravention of any order made under section 3 of the Essential Commodities Act, 1955, the licensing authority shall by writing an order cancel his licence. Therefore, such cancellation would be automatic and consequential.

Thus, in my view, since the impugned order suffers from fatal lacunae on both grounds, the same is quashed and set aside. However, it would be open for the authority concerned to proceed against the petitioner in accordance with law if, it so desire. It is further made clear that there is no provision under the Statute for stopping allotment to the dealer after any F.I.R is lodged under any provision of Essential Commodities Act, 1955 rather Clause 7 (vi) of the control order lays down in clear terms that allocation to F.P.S. dealer shall not be discontinued under any circumstance. However, in case of suspension or cancellation of licence allocation of the F.P.S. dealer should be tagged to the nearest and other F.P.S. dealer. The order as contained in Annexure- 1 series dated 21.09.2012 was admittedly passed without any order of either suspension or cancellation of licence, therefore, that order is also a nullity in law.

This application stands allowed.

(Dr. Ravi Ranjan, J)

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