

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12207 of 2014

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Madan Yadav @ Madan Prasad Yadav, S/o Late Mahanthi Yadav, Resident of village and P.S.- Kumarkhand, District- Madhepura

.... Petitioner

Versus

1. The State of Bihar through the Commissioner, Saharsa
2. The District Magistrate, Madhepura
3. The Sub Divisional Officer, Madhepura
4. The Block Supply Officer, Kumarkhand, Madhepura

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Dhananjaya Nath Tiwari, Advocate

For the Respondent/s : None

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 25-10-2016

Heard learned counsel for the petitioner. None appears on behalf of the State.

Though this writ application has been filed in the year 2014 but no counter affidavit has been filed as yet.

In above view of the matter, this Court, in the facts and circumstances, would proceed to consider the case on its own merit without waiting further for filing of the counter affidavit.

The petitioner is aggrieved by the order dated 24.07.2007, as contained in Annexure-1, by which his PDS licence has been cancelled as well as the appellate order dated 3.01.2014, as contained in Annexure-2, by which his appeal has also been dismissed.

It is urged on behalf of the petitioner that, on the basis of alleged irregularities, his licence was suspended on 20.10.2006.

Thereafter, vide an unreasoned order, as contained in Annexure-1 dated 24.07.2007, the Sub-Divisional Officer has cancelled his licence.

It is stated in the impugned order that vide letter no.468-2 dated 23.10.2006, a show cause notice was issued upon the petitioner for the alleged irregularities but no reply was filed, therefore, in view of the allegation made against him, his licence was cancelled. The aforesaid order has been appended as Annexure-3, however, it does not appear from the aforesaid order dated 23.10.2006 that any notice was issued upon the petitioner rather his licence was straightaway suspended.

It is contended that once the licence was suspended, on the self same charges, the order of cancellation could be bad as no show cause notice was ever served and further that there is no reason assigned for cancellation except the aforesaid allegation.

I find force in the submission raised on behalf of the petitioner. The suspension order was passed on 23.10.2006 when the Public Distribution System (Control) Order, 2001 was not enforced, thus, it has to be assumed that the order was passed under Clause 11 of the Bihar Trade Articles (Licences Unification) Order, 1984. Under Clause 11 (1) of the aforesaid Control Order, punishment of suspension can be granted apart from cancellation of licence whereas under Clause 11 (2), the order of suspension can be passed even without issuance of show cause notice in a proceeding in

contemplation of cancellation of the licence of the petitioner. In such case also, a show cause notice has to be issued as to why licence should not be cancelled. However, from Annexure-3, it does not appear that any notice for cancellation of licence was issued. Thus, it has to be assumed that order was passed by way of imposing punishment.

The issue is no longer *res intera* having already been set at rest by a Division Bench of this Court rendered in ***Shiv Chandra Jha Vs. Harideo Jha [2013 (3) PLJR 956]*** holding that once the authority has decided to suspend the licence by way of punishment, it cannot proceed to cancel the licence as no one can be punished twice for the same act of misconduct or offence.

Accordingly, this writ application stands allowed. The impugned orders, as contained in Annexure 1 and 2 are quashed and set aside.

Since the order of suspension was passed in the year 2006 itself and has outlived its life, the petitioner would be entitled for resumption of supplies immediately.

(Dr. Ravi Ranjan, J)

V.K. Pandey/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
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