

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.25702 of 2013

=====

Niranjan Gain, s/o Late Ratikant Gain, Resident Of At., P.O. And P.S. Amarpur,
District- Banka.

.... Petitioner

Versus

1. The State Of Bihar Through The Secretary Food And Consumer Protection Department, Old Secretariat, Patna.
2. The Sub Divisional Officer, Banka, District Banka.

.... Respondents

=====

Appearance :

For the Petitioner : Mr. Rajeev Kr. Labh, Advocate

For the State : Mr. Madhukar Krishna Sinha, Advocate

=====

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 05-04-2016

Heard parties.

By order dated 09.12.2013, on the basis of recommendation of three members enquiry team, allotment to the petitioner's fair price shop has been discontinued and by another order dated 10.12.2013, the same has been tagged with another licensee .

It is submitted on behalf of the petitioner that the order is without jurisdiction as there is no statutory provision to act in such a manner.

A counter affidavit has been filed.

The issue raised in this writ petition is as to whether the licensing authority could have stopped supplies to petitioner's fair price shop in such a manner and tagged it with other licensee ?



The statutory provision, in this regard, stands described under Clause 7 of the Public Distribution System (Control) Order, 2001. It is provided under Clause 7(ii), if there is any contravention of any provision or any terms and conditions of the licence of the licensee or he refrains from performing his duty, a proceeding can be initiated for cancellation of licence and after granting reasonable opportunity, the licence can be cancelled. However, so far, allocation of PDS dealer is concerned, it is stated in clear terms under Clause 7(vi) that the allocation of fair price shop dealers shall not be discontinued under any circumstance except in case of cancellation of licence.

It is further provided under Clause 7 (vii) that after cancellation of licence of the licensee the consumers shall be tagged to the nearest FPS shop. Similarly under Clause 7 (viii), it has been provided that in general circumstances the tagging of consumers shall not be changed. Admittedly, there is no order of cancellation in this case.

Learned counsel for the State has not been able to show from the counter affidavit that petitioner's licence was cancelled in such a background.

In my view, the licensing authority, being creature of the statute, cannot derive a power larger than what has been provided

in the statute itself i.e. Public Distribution System (Control) Order and as such, he could not have gone to stop the supplies to the petitioner's P.D.S. shop without following the mandatory provisions for cancellation of licence.

As a result, this writ application succeeds. The impugned order contained in Annexure-1 series is quashed and set aside. Petitioner's supply would immediately have to be resumed and all the consumers who were tagged to the petitioner's fair price shop and now transferred to the other FPS dealer should be again tagged with the petitioner's fair price shop. However, if the petitioner is involved in any irregularity or he has contravened any provision of Essential Commodities Act or has violated the terms and conditions of licence then it would be open for the licensing authority to initiate a proceeding in terms of Section 7(ii) in accordance with law, if it so desires.

(Dr. Ravi Ranjan, J.)

rinkee/-

U			
---	--	--	--