

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4581 of 2017

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M/s Sidhi Vinayak Service Station, a Proprietorship firm having its Wirk Place at Dadhapi, Madanpur (Aurangabad), through its Proprietor Smt. Savitri Singh, Wife of Sri Amit Kumar, resident of C/O Sri Sheo Shankar Prasad Singh, Mohalla-Jai Prakash Nagar, Karma Road, Aurangabad, P.S. & District-Aurangabad (Bihar).

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna.
2. The Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna.
3. The State Transport Commissioner, Transport Department, Government of Bihar, Patna.
4. The District Magistrate-cum-District Election Officer, Aurangabad, District-Aurangabad.
5. The District Transport Officer, Aurangabad, District-Aurangabad.
6. The Additional Collector-cum-Senior Incharge Officer, Transport Cell, Aurangabad.
7. The Sub-Divisional Officer, Aurangabad Sub-Division, District-Aurangabad.
8. The Block Development Officer, Madanpur Block, District-Aurangabad.
9. The Circle Officer-Cum-Incharge Officer, Transport Cell, Madanpur Block, Madanpur, District-Aurangabad.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Raj Kishore Prasad, Adv. Mr. Shailendra Kr. Singh, Adv.
For the Respondent/s	:	Smt. Archana Meenakshee- GP6 Mr. Karandeep Kumar, Adv. Mr. Prabhat Ranjan, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 01-09-2017

Heard learned counsel for the parties.

The present petitioner is a proprietorship firm, established the outlet for vending petrol and diesel. The petitioner was running the petroleum outlet and has received license for running the same under the Bihar Motor Spirit and High Speed Diesel Oil Dealer Licensing Order, 1966. During the year 2011 election, his outlet was identified for supply of diesel to the vehicles engaged in election work and the outlet was to supply



diesel on the basis of coupon bearing the signature of Ashok Kumar, Circle Officer, Madanpur Block, Madanpur, Aurangabad whose specimen signature was lying in his retail outlet for verification and confirmation. During the election period, he supplied diesel to the vehicles engaged in the election duty. Time to time, payments were made but, ultimately Rs. 85,550.45/- remained unpaid to the petitioner. On the basis of verified stored coupons, the petitioner made claim for payment of the said amount, when the petitioner did not receive proper response, he approached this Court in C.W.J.C. No. 3051 of 2015 which was disposed of with a direction to the Principal Secretary, Panchayati Raj Department to ensure payment of the admitted dues to the petitioner within a period of eight weeks. After disposal, the Principal Secretary drew a proceeding bearing Cr. Misc. No. 3 of 2015 and he directed the concerned District Magistrate to make necessary enquiry and submit a report.

The enquiry report was submitted in favour of the petitioner for payment but, the Principal Secretary was not satisfied, directed for further enquiry from the angle of ratio of consumption of fuel-vis-à-vis election booths too were to be supervised when a detailed enquiry was conducted, it was found that some of vehicles to which, fuel was given, were motorcycle and Scooter mentioned in the letter dated 22.05.2015 (Annexure-10) wherein number of discrepancies have been pointed out, arrived at the finding that the claim of the petitioner for Rs. 92,069.10/- is bogus and the District Magistrate vide order dated 19.1.2017 rejected the claim, at the same time, directed for initiation of proceeding for



cancellation of the license. In pursuance thereto, the District Transport Officer initiated the proceeding and passed an order against the petitioner, thereby canceled the license which was issued in favour of petitioner on the ground that he has raised the bogus bill for the fuel supplied during election with respect to certain vehicles which were not engaged in the election duty.

Learned counsel for the petitioner has submitted, though the District Transport Officer while passing the order, which is quasi judicial has not maintained the neutrality rather he has passed the order of cancellation of the license on the instruction and direction of the District Magistrate, Aurangabad, he has placed reliance on the operative part of the order reflects that it is nothing but a result of the direction of the District Magistrate as well as recommendation made by the Committee which had held enquiry with respect to the claim of the petitioner.

Learned counsel for the State has submitted that the order is in two part, from the order it appears that proper procedure has been adopted and all possible opportunity was giving to the petitioner and he participated in the enquiry as also the findings has been recorded on the basis of materials collected by the Enquiry Committee constituted to verify the claim of the petitioners is the basis for passing the order, has been discussed in the order itself, may be in the last part, he has mentioned the direction of the District Magistrate but, from reading the entire order, it completely reflects that it was independent order, not having been passed under the influence of any higher authority. He has given his own reasoning



for arriving to a final conclusion, inasmuch as, the procedure required has been followed.

Having considered the rival contentions of the parties, when the authority has been authorized to exercise the administrative or quasi judicial function, comes under the judicial scrutiny, the Court is required to examine the correctness of the order in the sense the authority, while passing the order, has maintained independency. The primary duty of the authority is that from his order, it should appear that he has maintained neutrality while exercising the quasi judicial function. Cancellation of the license for running the retail outlet entails a serious civil consequence, as the petitioner would be deprived of the bread and butter. In such a situation, the authority, while passing the order is required to see that he may not come under the outside influence or he should not pass the order on the dictate of any higher authority. Reliance can be placed to the judgment of *Manohar Lal (D) by Lrs. Vs. Ugrasen (D) by Lrs. & Ors.* reported in *2010(11) SCC 557*. In this case, the Hon'ble Apex Court has elaborately dealt with the situation, when the order is passed at the behest of higher authority, the person against whom action has been taken must have trust that he or she will get a fair treatment at the hand of the person who is exercising the power, dealing with his civil right to run the retail outlet. From the order dated 19.1.2017 it appears that the District Transport Authority was heavily burdened with the recommendation of the enquiry committee as well as he has passed the order on the direction of the District Election Officer cum District Magistrate which cannot be approved by this



Court.

In that view of the matter, the order dated 19.1.2017 is set aside and the matter is remanded back to the District Transport Officer, Aurangabad, who will consider the case of the petitioner and take a decision in accordance with law maintaining independence not come under any influence or dictation of the higher authority rather order should be passed on its merit, in accordance with law.

The petitioner, if so advised, may file any additional show-cause which would also be considered by the District Transport Officer and will take decision in accordance with law.

Let the District Transport Officer, Aurangabad should pass an order within a period of two months from the date of receipt/production of a copy of this order.

This Court is neither giving any opinion on the merit of the case nor is directing for restoration of the license as the revival of the license will be subject to result of the final order.

With the aforementioned observation and direction, this application is disposed of.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.09.2017
Transmission Date	NA

