

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1826 of 2016

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Ganesh Dutt Singh, Son of Late Ram Vilash Singh, resident of village-Bara
Basantpur, Police Station - Ara Mufassil, District - Bhojpur Ara

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna
2. The Principal Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna
3. The District Magistrate, Bhojpur, Ara
4. The Sub - Divisional officer, Sadar Ara, Bhojpur, Ara
5. The Block Supply officer, Sadar, Ara
6. Jay Prakash Yadav S/o late Vilash Singh Resident of Village -Bar Basantpur, P.S. Ara Muffassil, District - Bhojpur, Ara.

.... Respondents

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Appearance:

For the Petitioner/s : Mr. Anand Kumar Ojha, Adv.
Mr. Ashok Kumar Karna, Adv.
For the Private Respondent: Mr. Arun Kumar Pandey, Adv.
For the State : Mr. S.D. Yadav, A.A.G.-IX
Mr. Nagendra Kumar, A.C. to A.A.G.-IX

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 24-05-2016

Heard learned counsel appearing for the respective parties.

2. In the present case, the petitioner is challenging the action of respondents, whereby and whereunder the Sub-Divisional Officer, Sadar Ara, vide Memo No. 391 dated 07.02.2015 has



cancelled the attachment and allotment of food-grains and other materials to the petitioner under the Public Distribution System.

3. The short facts of this case are that the petitioner was granted panel P.D.S. licence bearing No.165 of 2000. The purpose was that in case of vacancy, the petitioner could be inducted for distribution of the essential commodities meant for the poor class of beneficiary. As it appears that Jay Prakash Yadav was the P.D.S. dealer of village Vakura, but on account of allegation made against him of misdemeanour, his licence was put under suspension and subsequently the licence was cancelled. On suspension of his licence, the present petitioner was appointed to fill up the vacuum as a P.D.S. dealer vide Licence No. 58 of 2007 and he was distributing the essential commodities to the consumers, who were attached with Jay Prakash Yadav.

4. As Jay Prakash Yadav was not satisfied with the cancellation of his licence, he moved before the appellate authority. The appellate authority has restored his licence, whereupon, on the report of the Block Supply Officer, Sadar Ara, the Sub Divisional Officer, Sadar Ara vide Memo No.391 dated 07.02.2015 restored the licence of Jay Prakash Yadav, but bifurcated the consumers/ beneficiaries 50-50 in between Jay Prakash Yadav and present



petitioner, vide Memo No.564 dated 06.12.2014 (Annexure-4 to this writ application). Against the aforesaid order, Jay Prakash Yadav has approached the District Magistrate, Bhojpur, Ara and brought the fact that the Sub-Divisional Officer, Sadar Ara has illegally divided the consumers 50-50 in between petitioner and the Jay Prakash Yadav. Whereupon, the District Magistrate, Bhojpur, Ara, vide letter dated 03.02.2015 (Annexure-B to the counter affidavit) directed the Sub-Divisional Officer, Sadar Ara, to furnish the report about the complaint made by Jay Prakash Yadav. Whereupon, the Sub-Divisional Officer, vide letter dated 07.02.2015 (Annexure-5 to the writ application) has brought back Jay Prakash Yadav to the original position and all the consumers who were receiving the food-grains and kerosene oil were restored, which caused heartburn to the present petitioner.

5. Learned counsel for the petitioner has submitted that he has no grievance with regard to restoration of the licence of Jay Prakash Yadav and 560 consumers have been attached with Jay Prakash Yadav as the Sub-Divisional Officer, Sadar Ara, has exercised his jurisdiction as licensing authority, thereby rest 560 consumers were allowed to be served by the present petitioner. He further submits that the Sub-Divisional Officer is the licensing



authority, is the proper authority to exercise his discretion balancing the competing right of both and when he has properly exercised his jurisdiction and power, divided the consumers in 50-50, in such circumstance, the District Magistrate being appellate authority should not have called upon to answer the division. It has been submitted by learned counsel for the petitioner that the counter affidavit itself indicates that he has shown annoyance to the Sub Divisional Officer, attaching 50-50 consumers in stead of restoring consumer in entirety.

6. It has further been submitted that it was uncalled for interference by the District Magistrate and virtually the Sub-Divisional Officer has taken action on account of direction of the District Magistrate, so the direction of the District Magistrate is completely *per se* illegal.

7. Whereas, learned counsel for the private respondent and learned counsel for the State have jointly submitted that it is not in dispute that the original licence holder was/is Jay Prakash Yadav, the petitioner was in panel licence was to be appointed to fill up the vacuum as a P.D.S. dealer. It has further been submitted that such type of incident has already taken place earlier, as the incident of Jay Prakash Yadav was put under suspension and



during the period of suspension the present petitioner was appointed as P.D.S. dealer for distributing the food-grains to the people who were attached with Jay Prakash Yadav. When the licence of Jay Prakash Yadav was restored, the petitioner had filed C.W.J.C. No. 11644 of 2008 before this Court and raised grievance that he should not be deprived for supplying the subsidized items to the beneficiaries, but this Court has refused to entertain the plea of the present petitioner and held that when the vacancy was created he was inducted as P.D.S. licence holder and when the licence of Jay Prakash Yadav was restored then he has been brought back to his original position. So, the petitioner cannot raise grievance with respect to restoration of consumers in entirety.

8. In the present case also for committing illegality the licence of Jay Prakash Yadav put under suspension, later on cancelled and the appellate authority has restored the licence, in such circumstance, now the petitioner cannot be allowed to claim a share of 50% from the stock. The position of Jay Prakash Yadav was restored, he will be entitled for whole not half.

9. Similar type of issue came before the Hon'ble Supreme Court in the case of *Poonam vs. State of U.P. and Others*, reported in *2016 (1) PLJR SC 218(S.C.)*, where the Hon'ble



Supreme Court has answered that the person who is in panel cannot claim a share in the area of original licence holder. In that case, different aspects were also taken into consideration about the person who is in panel licence it has been held that the person who is in panel cannot be allowed to dent the area of the original P.D.S. licence holder.

10. It will be relevant to quote paragraph No.50 of the said judgment, which reads as under:-

“50. We have referred to the said decision in extenso as there is emphasis on curtailment of legal right. The question to be posed is whether there is curtailment or extinction of a legal right of the appellant. The writ petitioner before the High Court was trying to establish her right in an independent manner, that is, she has an independent legal right. It is extremely difficult to hold that she has an independent legal right. It was the first allottee who could have continued in law, if his licence would not have been cancelled. He was entitled in law to prosecute his cause of action and restore his legal right. Restoration of the legal right is pivotal and the prime mover. The eclipse being over, he has to come back to the same position. His right gets revived and that revival of the right cannot be dented by the third party.”

11. In such view of the matter, this Court does not find



any error in the action of the Sub-Divisional Officer in restoring the original position of Jay Prakash Yadav. However, it is observed that as and when the vacancy will be created, the respondent will respond in a proper manner.

12. With the aforesaid observations, this writ petition is dismissed.

(Shivaji Pandey, J)

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