

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.948 of 2014

IN

Civil Writ Jurisdiction Case No. 21901 of 2012

- =====
1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
 2. The Principal Secretary, Department of Food & Consumer Protection, Government of Bihar, Patna.
 3. The District Magistrate, Saran, Chapra.

.... Appellant/s

Versus

1. M/s Kedar Maharaj through its Proprietor Prahlad Sharma Son of Late Kedar Maharaj Resident of Dighwara, Post - Dighwara, P.S. - Dighwara, District - Saran (Chapra).
2. The General Manager, Indian Oil Corporation Ltd., Lok Nayak Jai Prakash Bhawan, 5th Floor, Dak Bunglow Chowk, P.S. Kotwali, District - Patna.
3. The Senior Divisional Retail Sales Manager, Indian Oil Corporation Ltd., Muzaffarpur Divisional Office, Krishna Market, Akharaghat Road, Muzaffarpur.

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Anjani Kumar Singh, A.A.G.-4
For the Respondent-1	:	Mr. N. K. Agrawal. Sr. Advocate
		Mr. Amaresh Kumar Sinha, Advocate
For the Respondent 2 &3:		Mr. Anil Kumar Sinha, Advocate
		Mr. Amlesh Kumar Verma, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 03-04-2017

For the reasons indicated in the limitation application,
delay in filing of appeal is condoned.

I. A. No. 4901 of 2014 is allowed.

Two writ applications came to be filed, seeking identical relief, because it arose from a direction or order passed by the Principal Secretary, Department of Food and Consumer Protection, Government of Bihar, dated 20.07.2012.

The relevant order was letter no. 4547, dated 20th of



July, 2012, which was Annexure-5 to the writ application. Only one LPA has been filed in C. W. J. C. No. 21901 of 2012 against the order, dated 28th of October, 2013. By virtue of the impugned order of the writ application, i.e., Annexure-5, all the Collectors of the State were directed to ensure that all the wholesale dealers of Indian Oil Corporation, who were having license for running petrol pump as well as wholesale license for kerosene oil, would not run from the same premises and if the same were being run, they should be ordered to be shifted atleast 2 km apart. The reason for issuance of such a communication of the Principal Secretary of the Department was an instance of adulteration which came to the notice of the department by one such dealer in Bhagalpur.

As a follow up to the Annexure-5 of the writ application, a direction was issued by the Collector, Saran at Chapra to the private-respondent on 17.10.2012 to re-locate or else his license would be suspended. Even this order, therefore, became a subject matter of challenge.

The Learned Single Judge heard the arguments and came to a considered opinion that the Principal Secretary of the Department, should not issue such a direction, amending the terms and conditions of the license unilaterally, as the reading of the impugned notification does not indicate that this was issued under the orders of the State or under any statutory provision of any of the enactments. The letter is absolutely silent as to under what power



and authorities had issued such a direction.

The Learned Single Judge took note of the stand of the State emerging from the counter affidavit where a plea was taken that the power for the Principal Secretary flowed from Clause (25) of the Unification Order.

The Learned Single Judge has this to say thereafter;

“Learned senior counsel for the petitioners, in reply, submits that clause (25) of the Unification Order was not applicable in the case as it empowered the State Government or the Collector or the Licensing Authority to issue directions to any dealer with regard to purchase, sale, disposal, storage or exhibition of the price and stock list of all or any of the trade articles. He submits that the directions in terms of Clause (25) can be issued only within the four corners of the licence and in terms of its conditions. Any direction, purportedly issued under this Clause, amounting to change of any terms and conditions of the licence would therefore be beyond the jurisdiction of the State Government or the Collector or the Licensing Authority. He further submits that the Principal Secretary has not issued the impugned letter on behalf of the Government. His letter shows that it was issued by him from his own level. He further submits that as per sub-section (cc) of Section 2 read with sub-section (5) of Section 3 of the Essential Commodities Act, 1955, any general order has to be published in the official gazette to make it operative. He submits that in any case letter of the Principal Secretary was general in nature. Hence, even if it is assumed that the same was on behalf of the Government, the same had to be published in the official gazette before it could be enforced.

After having heard learned counsels for the parties and having considered the legal provisions, this



Court finds that though clause 25 of the Unification Order was not brought to the notice of learned single Judge in C.W.J.C.No.9944 of 2002, but the same does not improve the case of the respondents. Clause (25) of the Unification Order reads as follows :-

“25. Power to issue directions to dealers.- The State Government or the Collector or the Licensing Authority may issue directions to any dealer with regard to purchase, sale, disposal, storage or exhibition of the price and stock list of all or any of the trade articles.”

Language of Clause (25) clearly shows that it empowers the Government to issue certain guidelines or instruction to the licensee in course of conduct of business. The use of the word „storage“ cannot come in the aid of the respondents as by no stretch of imagination that can be inferred to include place of business.

Learned senior counsel for the petitioners has rightly pointed out that at the initial stage itself when any person submits an application for licence, the same has to be furnished in the form prescribed, which contains a column for place of business. It is not disputed that on receipt of an application, Licensing Authority gets an enquiry held with regard to information supplied by the applicant in the form, including in respect of proposed place of business and after being satisfied with the same only passes orders for issue of licence. Hence, place of business also becomes one of the terms and conditions of the licence.

In the circumstances, if an order is issued by the State Government or the Collector or the Licensing Authority under the provisions of the said Clause (25) of the Unification Order, directing the licensee to change the place of business, the same has to be treated as amounting to change of conditions of licence



and not a direction to the licensee in respect of his conduct of business. After deletion of the expression „suo motu“ from clause (9), it is clear that the Licensing Authority has no suo motu powers to direct the licensee to change his place of business which may amount to change of terms and conditions of licence. The amendment in the clause makes it clear that now it is only on the application of the licensee that the terms and conditions of the existing and operative licence can be changed. This aspect has been made clear by the learned single Judge of this Court also in C.W.J.C. No. 9944 of 2002.

In the circumstances, this Court finds that the letter of the Principal Secretary dated 20.7.2012 containing directions for change of business premises by the wholesale kerosene dealers 2 kms away from their outlet of petrol and diesel running under the licence issued under Bihar Motor Spirit and High Speed Diesel Oil Dealers Licensing Order, 1996 is without jurisdiction. Subsequent letters issued on behalf of the Oil Corporation and the Collector, which were issued solely on the direction of the Principal Secretary are also without jurisdiction. All the three letters (Annexures- 4, 5 and 6 in C.W.J.C. No. 21846 of 2012 and Annexures- 5, 6 and 7 in C.W.J.C. No.21901 of 2012) are therefore quashed.

There is no infirmity emerging from the reasons provided by the Learned Single Judge in quashing the order or communication of the Principal Secretary, which needs to be rectified.

The submission of the learned senior counsel, i.e., A.A.G.-4 that the said direction was issued in the interest of the public and for larger public good, the direction ought not to have



been interfered with, does not merit consideration for the reason that the Legislatures have been endowed with enough powers to either amend the law or the State Government to take a decision and notify such decisions in accordance with the prevalent law.

A plain reading of the order of the Principal Secretary, in no manner convinces this Court that such a direction has been issued in terms of any statutory provision or with due approval of the State of Bihar.

Law, which has a rigorous fall out on a citizen's right, must be strictly interpreted and enforced. The Court is convinced that the impugned Annexure-5 and the follow up order, issued thereto, have been rightly quashed by the Learned Single Judge for the reasons provided and noticed in the earlier part of the order.

Appeal has no merit, it is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

SKM/-

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CAV DATE	
Uploading Date	04.04.2017
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