

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7818 of 2016

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Mala Devi Wife of Bhola Sah resident of village - Khutia, P.S. Mansi, District -
Khagaria

.... Petitioner/s

Versus

1. The State of Bihar through the Collector, Khagaria
2. The S.D.O., Khagaria
3. The B.S.O., Mansi, Khagaria

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vijay Anand, Adv.

For the Respondent/s : Mr. Uday Bhan Singh, AC to GP-19

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 29-08-2017

Heard learned counsel for the petitioner and counsel for
the State.

In this case, the petitioner is challenging the order dated
16.4.2016 passed by the S.D.O., Khagaria, whereby and whereunder,
he has cancelled the license of the petitioner having held that he has
committed misdemeanor while running the P.D.S. shop.

The petitioner was running the P.D.S. shop vide license
no. 9M/2007, on the instruction of the District Magistrate, Khagaria,
the Senior Deputy Collector, Khagaria had inspected the P.D.S. shop
of the petitioner, submitted his report, recommended for cancellation
of the license. In pursuance thereof, the license has been cancelled
without considering the objection filed by the petitioner.



From perusal of the order itself discloses illegality in procedure as the District Magistrate, Khagaria has directed the Additional Collector, Khagaria, who is higher than S.D.O., to hold an enquiry and, in pursuant thereof, he has recommended for cancellation of the P.D.S. license of the petitioner. When the higher authority has conducted the inspection and recommended for cancellation of license, in such a situation, the lower authority, i.e. the S.D.O., who is the statutory authority, has to abide by his dictate without applying discretion but, to pass an order in terms of the recommendation made by the higher authority. That itself shows that it violates the basic principle of natural justice. In the event the authority failed to use his discretion, in such circumstances, it cannot be said that he has exercised his discretion in terms of the power conferred upon him under the Essential Commodity Act read with Control Order, reliance can be placed on the judgment in the case of *Manohar Lal (D) by Lrs. Vs. Ugrasen (D) Lrs. & Ors.* reported in 2010 (11) SCC 557.

In that view of the matter, the order dated 16.04.2016 passed by the S.D.O., Khagaria is set aside.

This Court could have quashed the entire proceedings but, to save the proceedings, this Court directs that the recommendation submitted by the Additional Collector, Khagaria, will not be treated to be recommendation but, it will be merely a



report and as already the petitioner has filed his objection, the S.D.O., Khagaria, without being influenced by the recommendation of the Additional Collector, will apply his independent mind and after considering the objection filed by the petitioner, will take a decision in accordance with law.

Let the S.D.O., Khagaria should decide the matter within a period of three months from the date of receipt/production of a copy of this order.

In the result, this writ application stands allowed.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.09.2017
Transmission Date	NA

