

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16926 of 2014

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Arjun Kumar Madhukar, son of Late Jai Narayan Sah, R/o Village-Bhgwanganj,
P.S.-Bhagwanganj, District-Patna

.... Petitioner/s

Versus

1. The State of Bihar through Secretary, Food and Civil Supply, Government of Bihar, Patna.
2. The District Magistrate, Patna
3. The Sub-Divisional Officer, Masauri, Patna
4. The Village Development Officer, Masauri, Patna.
5. The Block Prasar Officer, Masauri, Patna
6. The Block Panchayat Raj Officer, Masauri, Patna

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Anujit Sinha, Advocate

For the Respondents : Mr. Arvind Kumar, A.C. to S.C.-18

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

Date: 31-08-2017

Heard learned counsel for the petitioner and the
learned counsel appearing on behalf of the State.

2. The petitioner seeks to assail the order dated
16.07.2014, contained in Memo No.187 dated 18.07.2014
(Annexure 4), passed by the Sub-Divisional Officer, Masauri,
Patna, by which his licence, bearing Licence No.131/2007, for
running PDS dealership in Gram Panchayat-Bhagwanganj, has
been cancelled.

3. Learned counsel for the petitioner submits that the
impugned order, as contained in Annexure 4, is wholly illegal,
arbitrary and against the statutory principles and thus he is seeking



remedy under Article 226 of the Constitution of India.

4. Learned counsel for the petitioner assails the present order basically on two grounds, namely, (i) the show cause notices dated 18.06.2014 and 02.07.2014, issued to the petitioner, as contained in Annexures 1 and 2, are wholly vague and that the said notices do not indicate the proposed punishment against which the petitioner was required to show cause. (ii) The authorities, who is said to have conducted the inspection, as stated in the said notices, were not the authorities as notified in the Gazette, which is Annexure 5 to the writ application. He thus submits that in view of such patent illegality and statutory violation, the impugned notices as well as the order of punishment of cancellation, which was passed against the petitioner, is wholly illegal, arbitrary and fit to be set aside.

5. A counter affidavit has been filed by the State of Bihar, answering the contentions raised by the writ petitioner. In the said counter affidavit, it has been asserted that as per the instructions of the Sub-Divisional Officer, Masaurhi, Patna, the petitioner's PDS shop was inspected on 11.06.2014 by the Rural Development Officer (Training) Punpun, the Block Co-operative Extension Officer, Masaurhi and the Block Panchayat Raj Officer jointly and it was only on the basis of the said report, which was



noticed in the said notices itself, that the order of cancellation of his PDS dealership has been passed by the licensing authority, duly authorized under the Act. However, in paragraph 22 of the counter affidavit, the respondents have stated that the inspecting team had been authorized by the licensing authority, but the team could not inspect the same as the shop had been found to be closed and the matter was reported to the higher authority. It thus appears from such contradictory statement that, in fact, no inspection worth the name had been conducted so as to occasion the impugned notices.

6. It is well settled principle of law that “*delegata potestas non potest delegare*”. A delegated power cannot be delegated. Delegation by an agent, that is the entrusting to another person by an agent of the exercise of a power or duty entrusted to him by his principal, is in general prohibited, under the maxim *delegatus non potest delegare*, without the express authority of the principal, or authority derived from statute. HALSBURY, 4TH Edn., Vol.1, Para 747, p.448. It is thus apparent that the Sub-Divisional Officer himself having been delegated the power under the Public Distribution System (Control) Order, 2001, vide G.S.R. No.630(E) dated 31.08.2001, as the licensing authority under the Act, and that certain other officers having been recognized as the inspecting authorities by the notification itself, which has been issued under



the authority of the Governor, no other authority other than the authorities described in Annexure 5, which is dated 25.05.2006, could possibly venture to investigate and file reports, against any public distribution system licensee and as such, any such report would stand vitiated.

7. As a consequence, the contention of the respondents that the authorities who had gone to investigate and report on the petitioner's PDS shop had been authorized by the licensing authority, namely, the S.D.O., could not sustain in the eyes of law.

8. Having considered all facts and circumstances of the present case and after taking into consideration the stands adopted by the State of Bihar, this Court is of the considered opinion that by no stretch of imagination, any such licensing authority be permitted to act in a proceeding, which is contrary to the statutory provisions.

9. In the result, the impugned notices dated 18.06.2014 and 02.07.2014, as contained in Annexures 1 and 2, as well as the order of punishment dated 18.07.2014, as contained in Annexure 4, passed in pursuance thereof, stand vitiated and are quashed. The writ application is, thus, allowed and the licence of the petitioner's PDS shop is directed to be restored.

10. It goes without saying that such restoration



should be effected expeditiously within six weeks from the date of communication of this judgment/order. The supply to the PDS dealership must also be restored.

11. No costs.

(Anjana Mishra, J)

PNM

AFR/NAFR	NAFR
CAV DATE	N.A.
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