

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14902 of 2015

=====

Mithileshwar Prasad Singh S/o Late Amar Singh Resident of village -
Sahdullahpur, P.S. Lalganj, District - Vaishali

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food Supply & Consumer Protection Department, Government of Bihar, Patna
2. The Commissioner, Tirhut Division, Muzaffarpur
3. The District Magistrate, Vaishali
4. The District Supply officer, Vaishali
5. The Sub - Divisional officer - Cum - Licensing authority, Vaishali
6. The Block Supply Officer, Government of Bihar, Lalganj Block, District - Vaishali

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Rajendra Kumar Jain, Adv.
Mr. Pradeep Kumar Singh, Adv.
For the Respondent/s : Mrs. Bionita Singh, SC-28
Mr. Vivek Anand Amitesh, AC to SC-28

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 03-08-2017

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

In the present case, the petitioner is challenging the order
dated 21.10.2011 passed by the S.D.O., Hajipur which has been affirmed
by the District Magistrate, Vaishali vide order dated 27.08.2013 in P.D.S.
Appeal No. 65/2011 and the Revisional Commissioner, Tirhut Division,
Muzaffarpur, vide order dated 15.12.2014 passed in P.D.S. Revision Case
No. 484 of 2013, affirmed the two aforesaid orders and, thereby, approved
the cancellation of the P.D.S. licence of the petitioner.

The petitioner is a licence holder, running the PDS shop



having Licence No. 78/2007, for the period 1.6.2011 to 2.10.2011, he failed to lift the food grain and thus failed to distribute the same to the beneficiaries. On that account, the S.D.O., Hajipur initiated the proceeding against him. The Block Supply Officer vide letter no. 5 dated 25.5.2011 informed the Licensing Authority that the petitioner did not distribute the food grains meant for June, 2011. On the basis of the report, vide no. 647 dated 2.7.2011, a show-cause was demanded from the petitioner within 24 hours but, the same could not be filed. Again the Block Supply Officer vide letter no. 240 dated 22.9.2011 submitted a report that he has not lifted the food grains for five months and he has not followed the instruction circulated from time to time. On that account, the beneficiaries were deprived of the food grains. He was again issued notice of show-cause vide memo No. 1004 dated 1.10.2011, the petitioner filed reply to the show-cause vide explanation dated 7.10.2011 mentioning therein that on account of illness of the son there was a financial constraint, on that account, he could not lift the food grains and has also given explanation for failure to file his objection. The S.D.O., Vaishali, being not satisfied with the explanation, rejected the same and placing reliance on the order passed by the Hon'ble Supreme Court cancelled the licence of the petitioner. The petitioner challenged the aforesaid order unsuccessfully at appellate and revisional stage. The Revisional Authority has rejected the revision on two counts, firstly if he has a financial problem on account of illness of his son, how he has lifted the kerosene oil but purposely did not lift the food grains and, thereby, deprived the rightful beneficiaries of the food grains. It has



further been recorded that if his son was ill and he had financial problem, he should have given prior notice to the licensing authority apprising his condition but, he has remained silent and did not do the needful to allow the state authority to take proper action in the matter.

Learned counsel for the petitioner submits that as his son was suffering from Hepatitis and financial condition was also deteriorated and he was not in a position to lift the grain and further he has submitted that mere failure to lift the grain cannot be a ground for cancellation of licence in view of the letter of the Principal Secretary, Food & Consumer Protection Department, Government of Bihar dated 12.9.2012 wherein he has given an instruction to all District Magistrate, the license should not be cancelled on account of failure to lift the grain and, in such circumstances, the licence of the petitioner should not be cancelled merely failure to lift the food grain and distribute the same to the beneficiaries. Leaned counsel for the petitioner in support of the submission has placed reliance on the order dated 8.10.2015 passed in C.W.J.C. No. 589 of 2014 and the order dated 19.6.2017 passed in C.W.J.C. No. 12099 of 2015.

Learned counsel for the State has vehemently opposed the argument of the petitioner and submitted that when he has committed breach of terms of licence and also breach of statutory provision, the action of the authority cannot be said to bad in law.

Having considered the rival contentions of the parties, as the Principal Secretary, Food and Consumer Protections Department, Government of Bihar has instructed all the District Magistrates to refrain



from cancelling the licence on account of failure to lift the grain, the allegation which has been made in this application cannot be the basis for cancelling the licence of the petitioner even though the plea which has been taken by the petitioner is not acceptable to the authority. In such circumstances, the order dated 21.10.2011 passed by the S.D.O., Hajipur, the order dated 27.08.2013 passed by the District Magistrate, Vaishali and the order dated 15.12.2014 passed by the Commissioner, Tirhut Division, Muzaffarpur are not sustainable in law and the same are set aside with a direction to the Sub-Divisional Officer-cum-Licensing Authority, Vaishali to restore his position.

In the result, this application stands allowed.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.08.2017
Transmission Date	NA

