

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15887 of 2015

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1. Dashrath Rai S/o Late Ram Baran Rai, Resident of Village - Sandha Dumber, Panchayat - Nagar, P.S. - Motipur, District - Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Food & Consumer Protection Department, Bihar, Patna
2. The Collector, Muzaffarpur.
3. The Sub-Divisional Officer (West), Muzaffarpur.
4. The Block Development Officer - cum - In-charge Block Supply Officer, Motipur, Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dhananjaya Nath Tiwari

For the Respondent/s : Mrs. Binita Singh, S.C.28

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

6 01-11-2017 Heard learned counsel for the petitioner and the State.

In this case the petitioner is challenging the order contained in Memo No.337 dated 30.03.2015 whereby and whereunder the licence of the petitioner to run the public distribution shop being licence No.23020007/2008 has been cancelled without considering the show cause filed by the petitioner. The petitioner was allotted the licence to run the public distribution shop. The father of the petitioner was taken into custody in a criminal case on 9.3.2015 and just thereafter the son of the petitioner informed the Block Supply Officer, Motipur, that his father had been taken into custody in a criminal case on 9.3.2015 and he made a request to the Block Supply Officer that



since his father was in custody, therefore, allotment of the petitioner may be tagged with other dealer in the interest of public till the release of his father. Thereafter the Block Supply Officer referred the matter to the licensing authority on 11.03.2015 who had issued a show cause notice on 18.03.2015 to the petitioner mentioning therein that without cancelling the licence the allotment meant for petitioner cannot be tagged with other dealer, issued a notice to the petitioner to file show cause reply within 24 hours why the licence of the petitioner be not cancelled and tagged with the other P.D.S. dealer.

It appears that the show cause notice was not served upon the petitioner as during that period he was in the custody, and as such he failed to respond to the show cause notice but the order has been passed by the licensing authority wherein it has been recorded that the petitioner was given notice but he failed to give reply, inasmuch as petitioner was put in jail custody which violates the terms and conditions of the licence and, as such, his shop is required to be tagged with the other dealer, passed the order thereby cancelled the licence of the petitioner forth with and directed that the shop of the petitioner be tagged with other dealer.

Counsel for the petitioner submits that the licence of the petitioner cannot be cancelled merely because the petitioner was



taken in custody with respect to the matter not connected with the E.C.Act. Counsel for the petitioner submits, unless the conviction was/is recorded by competent court under the E.C.Act and Control Order, the licence of the petitioner could not be cancelled. He has placed reliance on the Clause-14 of the Control Order which reads as follows:-

“Clause 14:- Consequence of conviction where licensee has been convicted by the court of law by contravention under Section 3 of the E.C.Act, the licensing authority shall cancel his licence.”

On the strength of formulation of Clause 14 it has been argued that only in a case of conviction connected to the Essential Commodities Act,1955, the licence of the licensee can be cancelled not otherwise. It has further been argued that admittedly, the petitioner is a licence holder and an F.I.R. has been lodged with respect to the substantive case under Section of the Indian Penal Code. Mere taking in jail custody will not lead to cancellation of his licence. This issue is no longer re integra as this Court in Girani Ram Vs. the State of Bihar(L.P.A. No.1572 of 2010) has held, licence can be cancelled only on conviction in E.C. Act matter not otherwise.



In the present case, admittedly, cancellation of licence has not been passed in connection with conviction under E.C.Act and, as such, the order passed by the S.D.O. (West) Muzaffarpur, is set aside and the S.D.O. is directed to restore the licence of the petitioner, if no other proceeding is pending against him.

The writ petition is allowed.

(Shivaji Pandey, J)

AnilKrSinha/-

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