

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15601 of 2014

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Rajia Devi wife of Ram Sevak Yadav Village + P.O. Kathra, P.S.
Manigachi, District - Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Commission cum Secretary, Department of Food, Civil, Supply and Commerce, Government of Bihar, Patna.
3. The District Magistrate, Darbhanga.
4. The District Supply Officer, Darbhanga.
5. The S.D.O. Sadar, Darbhanga.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. N.K. Agrawal, Sr. Advocate
Mr. Ashok Kumar Prasad, Advocate
For the Respondent/s : Mrs. Nutan Kumari Sharma, AC to GA -1

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

3 29-06-2017 Heard Senior Counsel appearing on behalf of the

petitioner and learned counsel appearing on behalf of the State.

The writ petitioner seeks to challenge the order dated 09.07.2003 contained in Memo No. 1264 passed by the Sub Divisional Officer, Sadar Darbhanga whereby and whereunder the agreement of the petitioner for running shops under the Public Distribution System, has been cancelled.

Learned Senior Counsel for the petitioner submits that the petitioner was running a valid PDS dealership having License No. 2 of 1994. The petitioner had also deposited a sum of Rs. 400/- through Challan for extension/renewal of licence. It is



further submitted that the aforesaid order was passed on the basis of directives of the Supply Department whereby the number of PDS dealers had been found restricted according to the population of the village concerned. It is further submitted that the directives of the State Government came under challenge in several writ application before this Court which were held to be illegal and this Court vide Annexure-8 series has set aside all such cancellation/suspension of agreement and has directed that such PDS dealers who had valid licence would not be restrained from carrying on their business. The petitioner including the other similarly situated persons after disposal of such writ application had also approached the authorities for consideration of their case. Even though the case of the petitioner and other similarly situated persons had been recommended by the Block Supply Officer, Taradih, Darbhanga vide his letter dated 12th of February, 2013 (Annexure-6) yet no positive order was passed in her favour.

Learned counsel for the State submits that as per the counter affidavit the State has agreed to issue another order if at all any vacancy of PDS dealer is available in the concerned area. It is further submitted that such decision would be made only on priority basis and not otherwise.

Having heard learned counsel for the petitioner and



learned counsel for the State, it appears that the matter is squarely covered by the earlier decision of this Court including the decision reported in 2007(supplement) PLJR 258 in which relying on the judgement of the Apex Court cited in AIR 2002 SC 1633 it has been held as follows:-

Paragraph-8

“The petitioners therein were licensee as petty dealer in rural areas under the aforesaid statutory order. An executive order then came to be issued that no licence for retail sale of diesel oil under the statutory order shall be renewed if the places of such licence falls within a radius of 5 Kms. of a Government run retail outlet. **It was held that the statutory order was a complete code by itself and renewal could not be refused on the ground that licensee’s place of business falls within a radius of 5 Kms. of a Government retail outlet.** It was further held that since there is no provision in the statutory order to refuse renewal of a licence granted under the statutory order on the aforesaid ground, the direction/order issued by the Licensing Authority to the contrary was clearly inconsistent



with the statutory order.”

As such, this Court finds that since the petitioner is also continuously functioning as PDS dealer, the suspension of the licence/agreement of the petitioner would be wholly illegal and arbitrary and cannot be sustained in the eye of law. It is, thus, directed that since the impugned order is de hors the provisions of the licensing order, the authority shall take immediate steps to restore the supply of material to the concerned PDS dealer within a period of three months on receipt/production of a copy of this order.

With the aforementioned direction, the present application stands allowed.

(Anjana Mishra, J)

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