

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17158 of 2014

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1. Jagdish Paswan son of Late Mouji Lal Paswan resident of village -
Gospurpatti, Gram Parmanandpur, P.S. - Birpur, District - Supaul.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Food and Counsumer Protection, Government of Bihar, Patna.
2. The Divisional Commissioner, Saharsa Division, Saharsa.
3. The Collector, Supaul.
4. The Sub-Divisional Officer, Birpur, Supaul.
5. The Block Supply Officer, Basantpur, Supaul.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pramod Mishra

For the Respondent/s : Mr. G.P. 18

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

4 17-08-2017

Heard learned counsel for the petitioner and

learned counsel for the State.

The petitioner is aggrieved by order dated 07.08.2011 by which the Revisional Authority being the Divisional Commissioner, Saharsa has rejected the revision filed against the appellate order dated 09.04.2010 passed by the respondent – Collector, Supaul who, in turn, had rejected the cancellation order issued by the respondent – Sub Divisional Officer, Birpur, Supaul as contained in Memo No. 805 dated 28.11.2008, cancelling the license of the petitioner. The petitioner's representation before the Principal Secretary as directed by this Court in C.W.J.C. No. 6486 of 2012 vide order



dated 21.01.2013 (Annexure-13) has also been assailed in the present writ application.

Learned counsel for the petitioner submits that the petitioner approached this Court in C.W.J.C. No. 6486 of 2012 which was disposed off vide order dated 21.01.2013 directing the Principal Secretary, Department of Food & Civil Supplies, Government of Bihar to consider the grievance of the petitioner with regard to the cancellation of his PDS dealership.

Learned counsel for the petitioner further submits that though the petitioner approached the Principal Secretary, Department of Food & Civil Supplies, Government of Bihar, the authority failed to appreciate the case of the petitioner in the light of the provisions of the Control Order of the year, 2007. He, thus, submits that for consideration of the petitioner's case, the petitioner has once again approached this Court under its extraordinary remedy under Article 226 of the Constitution of India seeking equitable and expeditious relief.

Learned counsel for the petitioner further submits that the case of the petitioner stands purely covered by the decision of this Court in the case of Shiv Chandra Jha Versus Harideo Jha & Ors. reported in 2013 (2) BLJ, wherein this Court categorically held that :-



“Power to suspend or cancel licence conferred by sub-clause (ii) of Clause 8 of 2007 order is akin to power to cancel or suspend licence under sub-clause (1) of Clause 11 of 1984 order – Power to suspend or cancel licence conferred under Clause 7 (ii) is clearly a power to impose punishment – Two punishments envisaged are mutually exclusive – It may be a punishment of suspending licence or of cancelling licence - It cannot be both - 2007 Order does not contemplate suspension of licence pending proceeding or in contemplation of proceeding.”

Thus, this Court has clearly held that both the punishments cannot be inflicted by the same authority as it would amount to double punishment.

Learned counsel for the State while contending that the order of cancellation has been passed after suspending his licence submits that there is no doubt that the 2007 Order had a different spirit as appreciated by this Court in the aforementioned judgment. The impugned orders have but to be deprecated as the case of the petitioner is fully covered by the said judgment.

In view of the aforementioned observations and the judgment cited at the Bar, the impugned orders bearing Memo No. 805 dated 28.11.2008 (Annexure-5), order dated



09.04.2010 (Annexure -7), order dated 07.08.2011 (Annexure-11) and Memo No. 6480 dated 09.10.2013 (Annexure-13) are quashed. The licence of the petitioner is directed to be restored.

However, it will be open for the petitioner to approach the concerned authority for resumption of supply of his PDS shop in accordance with law.

With the aforementioned direction, the writ application stands allowed.

(Anjana Mishra, J)

Jagdish/-

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