

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20249 of 2014

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Kunwar Singh son of Dhanushdhari Singh, resident of village- Kadiahi Khurd,
P.O.- Dewaria, P.S.- Obra, District- Aurangabad (Bihar)

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Aurangabad, District- Aurangabad
3. Sub-Divisional Officer, Daudnagar, District- Aurangabad, Bihar
4. The Block Supply Officer, Obra, Daudnagar, District- Aurangabad, Bihar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bachan Jee Ojha, Advocate

For the Respondent/s : Mr. Anil Kumar Singh GP 26

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 23-02-2017

Heard learned counsel for the petitioner and the State.

The petitioner seeks quashing of the order dated 21.2.2011 passed by the Sub Divisional Magistrate – cum – licensing authority, Aurangabad, as contained in Annexure-5, by which his PDS licence No. 10/0/90 has been cancelled. He also assails the appellate order dated 19.8.2014 passed in PDS Appeal No. 65/2014 (Annexure 6), by which his appeal has been dismissed on the ground of limitation and the order of suspension has been upheld.

Sole ground taken by the petitioner in this writ application is that once a punishment of suspension was imposed by the licensing authority for the charges levelled against him, the



authority could not have proceeded further impose punishment of cancellation on the self same charges as it is well settled that a persons cannot be vexed twice for the same fault. A reference in this regard is made to a decision of a Division Bench of this Court rendered in *Shiv Chandra Jha Vs. Harideo Jha [2013 (3) PLJR 956]*.

A counter affidavit has been filed on behalf of the State. Though such ground has not been taken in the counter affidavit but learned counsel, at the time of hearing of this writ application, has submitted that this writ application suffers from delay and laches as the order of 2011 is being assailed in the year 2014, i.e., after three years.

Per contra learned counsel appearing for the petitioner has submitted that appeal was preferred against the order of suspension as would appear from Annexure 6.

Be that as it may, from the impugned order itself it is quite clear that the order is without jurisdiction as the authority concerned was not a competent to pass such order being teeth of the decision of the Division Bench rendered in **Shiv Chandra Jha(supra)**. Once the order is held to be without jurisdiction, even if there is issue of delay, such order cannot be allowed to survive.

As a result, in my considered view, the impugned order



has to go and, accordingly, the same is quashed and set aside.

So far the order of order of suspension is concerned, in my considered view, the same has also outlived its life as the licence could have been suspended for maximum period of 90 days only unless the suspension was in lieu of lodgment of first information report under Section 7 of the Essential Commodities Act, as was earlier provided under the PDS Control Order, 2001 under Clause 7(III). However, even that Clause has subsequently been deleted by bringing amendment in the PDS Control Order which was effective from the 23rd June, 2011,

In such situation the suspension order is also not in operation and as such the supplies to the petitioner's PDS shop has to resume immediately. Ordered accordingly.

In the result, this writ application stands allowed.

(Dr. Ravi Ranjan, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
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