

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13648 of 2014

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Ram Sumer Singh S/o Late Jote Narayan Singh Resident of Vill- Sirkohia, P.S.-
Saraiya, P.O.- Jaitpur, Estate, Distt. Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Food and Civil Supplies, Government of Bihar.
2. The Principal Secretary, Department of Food and Civil Supplies, Government of Bihar.
3. The District Magistrate, Muzaffarpur.
4. The Sub- Divisional Officer, West Muzaffarpur, Distt.- Muzaffarpur.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Brajesh Kumar, Advocate

For the Respondent/s : Mr. ASHOK PRIYADARSHI, G.A.-4

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

Date: 11-05-2017

Heard learned counsel for the petitioner and learned
counsel appearing on behalf of the State.

The petitioner seeks quashing of Annexure-3 and 4
issued by the Sub-Divisional Officer, West Muzaffarpur whereby the
P.D.S. license of the petitioner has been suspended and thereafter vide
Memo No. 380 dated 30.3.2010, the Sub-Divisional Officer has
proceeded to cancel the P.D.S. license of the petitioner without
following the due process of law.

Shorn of unnecessary details, the facts of the case are
that the petitioner was issued a show cause notice from the Sub
Divisional Officer, West Muzaffarpur on 05.11.2009 regarding three
allegations which were duly answered by him on 21.11.2009.



However, on the same date, vide Annexure-3, The Sub-Divisional Officer, West Muzaffarpur suspended the license of the petitioner with immediate effect and also directed the petitioner to submit his reply within a week, calling upon him to furnish the explanation as to why his license be not cancelled for violating the directions of the license issued in his favour. It is relevant to mention here that the petitioner had not been keeping good health and had been undergoing medical treatment and accordingly offered such explanation along with the necessary proof thereof.

Learned counsel for the petitioner submits that the impugned order as contained in Annexure-3 and 4 is wholly illegal and arbitrary as the orders impugned have been passed in utter violation of the principles of law as enshrined in the 2007 order. He further submits that the notice at Annexure-3 by which his P.D.S. dealership has been suspended also proceeds to issue notice to him as to why cancellation can be not effected in the case of the petitioner's license. It is accordingly submitted that such notice itself is bad and stands vitiated as not only being against the provisions of law as contained in the Public Distribution System (Control) Order, 2007 but also being contrary to the law as settled by this Court.

The different orders down the years have been effectively dealt with in the judgment of this Court in the case of **Shiv Chandra Jha vs. Harideo Jha reported in 2013(3) PLJR (HC) page 956**. Para 17 of the judgment reads as hereunder:



“17. Pursuant to paragraph 5 of the annexe to the 2001 Order, as amended by GSR 392(E) dated 29th June 2004, the Government of Bihar has, in exercise of power conferred by [Section 3](#) of the Act, issued Fair Price Shop Order, 2007. Clause 1 thereof provides for termination of the existing licence and issuance of a new licence. It further provides that the 1984 Order will not apply to fair price shops under the public distribution system. Thus, it is apparent that since the issuance of the 2007 Order, the licence for fair price shops are governed by the 2007 Order. Clause 7 thereof provides for suspension and cancellation of licence. Sub-clauses (ii), (iii), (iv) and (v) thereof read as under:

"(ii) If any licensee contravenes the provision, terms of the licence, duties, responsibilities and order of the State Government then the Licensing Authority shall suspend/cancel the licence by a written order.

(iii) If F.I.R. is lodged against FPS dealers for 8 Patna High Court LPA No.15 of 2011 dt. 04.02-2013 8 / 11 contravention of an order issued under [Essential Commodities Act](#), 1955, their licence shall be suspended till the matter is pending before the Court of Law.

(iv) It shall be necessary to ask show cause by the Licensing Authority to licensee before suspending licence. Licensee will be given a reasonable opportunity stating his case against the proposed cancellation.

(v) Suspension of licence shall be for a maximum period of ninety days. In the meantime records relating to suspension of licence should be sent to the



District Level Selection Committee within a fortnight from the date of suspension of licence. The Selection Committee after due enquiry shall recommend for revocation of suspension the Licensing Authority shall act accordingly."

Further in para-18 & 19, this Court has held as under:

"18. It is apparent that power to suspend or cancel the licence for contravention of the terms of licence under the 2007 Order is similar to the one under Clause 11 of the 1984 Order. Clause 11 of the 1984 Order provides, "... licence may be cancelled or suspended...". Whereas, Clause 7(ii) of the 2007 Order provides, "...Licensing Authority shall suspend/cancel the licence...".

"19. Clause 7(ii) is clear and unambiguous. The preposition "or" used in the said sub-clause is disjunctive and has to be read in the same way. The power to suspend or cancel the licence conferred under the said Clause is clearly a power to impose punishment. The two punishments envisaged are mutually exclusive. It may be a punishment of suspending the licence or of cancelling the licence. It cannot be both."

It is thus submitted that the proposition used in the sub-clause 7.2 is clear and there can be no two punishment. The power conferred under the said clause is clearly a power to impose punishments.

It is thus clear that from the notice that the impugned order as contained in Annexure-3 itself sought to impose the punishment of suspension on the petitioner and also was clearly inclined towards punishment of cancellation which is impermissible in law. Thus the impugned order stands wholly vitiated and is fit to



be set aside. Another ground which has been urged before this Court is that the enquiry report against the petitioner was never served on him which is clearly violative of the principles of natural justice and such order having been passed in utter violation of the principle of audi alteram partem, is fit to be set aside.

In the counter affidavit filed by the State, a bald statement has been made that the enquiry against the petitioner was initiated on the basis of the complaint petition. It is, however, not known from the recitals of the counter affidavit as to whether the copy of the complaint petition was ever given to the petitioner. Furthermore, the counter affidavit does not disclose as to whether the enquiry which was conducted against the petitioner and the report which was submitted pursuant thereto was ever served on him so as to offer him enough opportunity to answer the charges as passed against him and under such circumstances, the submission made by the respondents that the petitioner had failed to give a satisfactory reply which necessitated the cause of action is wholly fit to be rejected.

I have heard learned counsel for the petitioner and learned counsel appearing on behalf of the State. It appears that the entire action against the petitioner is against the principles of law as contained in Control Order, 2007 and also stands supported by the earlier judgments of this Court. The orders impugned at Annexure-3 and 4 thus cannot be sustained and are quashed. It appears also from the impugned orders that the order of cancellation has been issued



after the statutory period of 90 days which is against the provision of law and cannot be sustained on that score also the impugned orders of cancellation stand vitiated. Considering the fact that the petitioner has been sufficiently punished, it would be in the interest of justice that the petitioner's license should be restored and such action of the respondents should come about within a period of six weeks from the date of receipt / production of a copy of this order.

This application stands disposed of.

(Anjana Mishra, J)

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