IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.594 of 2002

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Khagendra Kumar Das, S/o Late Dhirendra Kumar Das, resident of Harisabha Chauk, P.S.-Mithanpura, Distt.-Muzaffarpur.

.... Petitioner

Versus

1. The State of Bihar.
2. The Chief Inspecting Officer under Bihar Shops and Establishment Act, Combined Labour Building, Bailey Road, Patna-800 001.
3. The Labour Superintendent, Chatta Chauk, Muzaffarpur.
4. Sri Tapas Kumar Das, S/o late Dhirendra Kumar Das, resident of Harisabha Chauk, P.S.-Mithanpura, Distt.-Muzaffarpur.
5. Sri Anandi Kumar Das, S/o Late Dhirendra Kumar Das, resident of Harisabha Chauk, P.S.-Mithanpura, Distt.-Muzaffarpur.

.... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Alok Kumar Sinha, Advocate
		Mr. Manish Kumar, Advocate
		Mr. Indrajeet Bhushan, Advocate
For the Respondent-State	:	Mr. Rewti Kant Raman, AC to SC-11
For the Private Respondents	:	None

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 15-02-2018

Heard Mr. Alok Kumar Sinha, learned counsel for the petitioner and Mr. Rewti Kant Raman, AC to SC-11 for the State. Despite valid service of notice to the private respondents, nobody appears on their behalf.

2. In the present writ petition, the petitioner has prayed for quashing the order dated 08.10.2001 passed by the respondent no.2 by which he has hold that the orders dated 29.10.1997 passed by the respondent no.3 by which he had cancelled the registration No.MZ-13437 issued in the name of proprietorship firm of respondent no.4 and revived the registration No.MZ-721/746 in the name of 'Bihar Bandhu Misthan Bhandar' respectively to be bad in law and without jurisdiction and, thus, set aside the same.

3. The facts of the case, in brief, according to the petitioner is that he is running a shop known as 'Bihar Bandhu Misthan Bhandar', Muzaffarpur duly licensed under the Bihar Shops and Establishments Act, 1953 (for short 'the Act of 1953'). The registration number of the shop is MZ-721/746. Initially, the father of petitioner and also respondent nos. 3 and 4 used to run the said shop. His father died in the year 1989. After his death, the petitioner continued the business. The other brothers including respondent nos. 4 and 5 never objected to the running of the shop by the petitioner. The other brothers had their different activities in the shop business along with petitioner and the affairs of the family were being maintained from the income of the shop. Subsequently, some mischief was played by respondent no.4. He filed an application under Form-V to the respondent no.2 in the year 1993 said to have

been signed by the petitioner and his another brother. In the petition, it was stated that the establishment having registration No.MZ-721/746 was closed with effect from 31.03.1992 for ever for the reason of sale of the shop. Pursuant to the submission of application under Form-V under Rule 9(1) of the Bihar Shops and Establishments Rules, 1955 (for short 'the Rule 1955'), the registration of the establishment was cancelled vide order dated 08.06.1993. Thereafter, respondent no.4 submitted an application for registration of the shop known as 'New Bihar Bandhu Misthan Bhandar' in the year 1993 for the same shop, which was being run by the petitioner. He also obtained a licence in the name of 'New Bihar Bandhu Misthan Bhandar' vide Licence No.MZ-13437 dated 12.07.1993. As the petitioner could come to know about the cancellation of the previous license and issuance of a new license in the name of 'New Bihar Bandhu Misthan Bhandar' in 1997, he filed an application before the Inspecting Officer for cancellation of the new registration on the ground that not only fraud was played upon him but also upon the office of respondent no.3, as the Form-V, which was said to have been filed was not genuine. It was neither filled up by the petitioner nor it was ever signed by him. The signature of the petitioner therefore was forged and fabricated.

5. On receipt of the application filed by the

petitioner, the Inspecting Officer-cum-Labour Superintendent issued notice and after giving due opportunity to all the parties and after making an inquiry himself in presence of the parties, he came to the conclusion that submission of Form-V was a fraud. It did not contain the genuine signature of the petitioner and, therefore, he cancelled the registration No. MZ-13437 dated 12.07.1993 issued in the name of 'New Bihar Bandhu Misthan Bhandar' and restored the earlier registration bearing No.MZ 721/746 issued in the name of 'Bihar Bandhu Misthan Bhandar' vide order dated 29.10.1997.

6. The respondent no.4 filed a review application against the aforesaid order dated 29.10.1997, which was also dismissed after hearing the parties. Thereafter, respondent no.4 filed a writ petition before this Court vide C.W.J.C. No.4099 of 1998 and challenged the order passed by the Inspecting Officer-cum-Labour Superintendent, Muzaffarpur. This Court after hearing the parties, vide order dated 12.01.2000 passed in C.W.J.C. No.4099 of 1998 disposed of the writ application filed by the respondent no.4 with a direction to file a representation before the Chief Inspecting Officer, Bihar within two weeks. In case of filing of representation within time, the Chief Inspecting Officer was required to dispose of the same by an appropriate order upon hearing all the parties within a period of two months from the date of filing of the representation.

7. Thereafter, respondent no.4 filed a representation before the Chief Inspecting Officer on 26.01.2000. After receipt of representation, notices were issued to the petitioner and the private respondents and after hearing the parties, the impugned order dated 08.10.2001 was passed by the Chief Inspecting Officer, Muzaffarpur.

8. It is submitted by Mr. Alok Kumar Sinha, learned counsel for the petitioner that the impugned order dated 08.10.2001 is bad in law as well as on facts. He submitted that under Rule 26 of the Rules, 1955 power of Inspecting Officer-cum-Labour Superintendent has been prescribed but no special or additional power for the Chief Inspecting Officer has been provided or prescribed. Even under Section 30 of the Act of 1953, the power and jurisdiction of an Inspecting Officer has been provided, but no special or additional power for the Chief Inspecting Officer has been provided. According to him, the Chief Inspecting Officer also exercises the same power and jurisdiction as that of any other Inspecting Officer appointed under the Act of 1955 except to the extent if some powers have been additionally prescribed for the Chief Inspecting Officer under the Act or the Rules. According to him, Rule 3(7) of the Rules, 1955 prescribes that in case of dispute or difference between an employer and the Inspecting Officer

regarding liabilities of registration of an establishment, the Inspecting Officer-cum-Labour Superintendent is required to refer the matter to the Chief Inspecting Officer whose decision shall be final, but in the present case, there was no doubt or difference of opinion between the employer and the Inspecting Officer as to liabilities of registration of the establishment and payment of fees and, thus, there was no occasion for the Inspecting Officer-cum-Labour Superintendent to refer the matter to the Chief Inspecting Officer, Bihar for determination of the issue. He contended that the Chief Inspecting Officer has wrongly interpreted the provision prescribed under Rule 3(7) of the Rules of 1955 and held that the Inspecting Officer ought to have referred the matter to him instead of cancelling the subsequent licence issued in the name of 'New Bihar Bandhu Misthan Bhandar' and reviving the earlier licence, which had already been cancelled. Mr. Sinha further submitted that prior to arriving at the conclusion, the Chief Inspecting Officer never visited or inspected the establishment in question. He also submitted that the order passed by this Court in C.W.J.C. No.4099 of 1998 could not have been interpreted or construed as empowering the Chief Inspecting Officer, Bihar with the power, which he was not empowered to, such as sitting in appeal over the order passed by and Inspecting Officer or deciding such issues, which he was not competent to do under the Act and Rules made under the Act.

9. On the other hand, Mr. Rewti Kant Raman, learned counsel appearing for the State submitted that the Chief Inspecting Officer, Bihar was fully competent to decide the issue pursuant to the order dated 12.01.2000 passed in C.W.J.C. No.4099 of 1988 by this Court. He submitted that this Court had clearly directed the Chief Inspecting Officer to hear the parties on filing of representation by the respondent no.4 and decide the same within two months. He contended that even though there was no doubt or difference of opinion, as to the liabilities of the registration of the establishment and payment of fees, the issue decided by the Chief Inspecting Officer cannot be faulted with for the simple reason that this Court had issued a mandamus to the Chief Inspecting Officer to determine and decide the issues raised in the representation.

10. I have heard learned counsel for the parties and perused the record.

11. It is true that neither under Section 30 of the Act of 1953 nor under Rule 26 of the Rules of 1955, the Chief Inspecting Officer-cum-Labour Superintendent has been provided with any special or additional power. The Chief Inspecting Officer, therefore, exercises the same power and jurisdiction as that of the any other

Inspecting Officer appointed under the Act of 1953. He does not have the appellate jurisdiction against an order passed by the Inspecting Officer-cum-Labour Superintendent. However, the petitioner cannot raise this issue at the stage, as he was a party to the proceeding in C.W.J.C. No.4099 of 1989. He has accepted the order passed by this Court on 12.01.2000 in the said writ petition and, pursuant to that, he has contested the matter before the Chief Inspecting Officer, Bihar. The Chief Inspecting Officer, Bihar was exercising his jurisdiction in hearing the matter under the order of this Court and, thus, he was not exercising any appellate jurisdiction. On this score, the order passed by him cannot be said to be vitiated. However, it is to be seen as to whether or not the impugned order passed by the Chief Inspecting Officer, Bihar is otherwise sustainable.

12. On careful examination of the relevant provisions of the Act of 1953 and the Rules of 1955, it would be evident that all the powers relating to registration, renewal and cancellation of licence is vested with Inspecting Officer-cum-Labour Superintendent appointed under the Act of 1953 and not with the Chief Inspecting Officer, Bihar and, hence, the reasoning given by the Chief Inspecting Officer, Bihar in his impugned order stating that the Inspecting Officer-cum-Labour Superintendent,

Muzaffarpur did not have the jurisdiction and authority to pass an order is completely erroneous. The Chief Inspecting Officer has failed to appreciate that by cancelling the registration of new certificate granted to respondent no.4 and restoring the old registration certificate, the Inspecting Officer-cum-Labour Superintendent had not decided any dispute said to be existing between an employee and Inspecting Officer as to the liabilities of registration of the establishment and payment of fees. Therefore, it was not obligatory upon the Inspecting Officer-cum-Labour Superintendent to refer the matter to the Chief Inspecting Officer, Bihar under Rule 3(7) of the Rules of 1955.

13. I also find force in the submission made by the learned counsel for the petitioner that before passing the impugned order the Chief Inspecting Officer ought to have carried out an on spot inspection in terms of Section 30(1)(a) of the Act of 1953 and Rule 26(a) of the Rules 1955 in order to find out the reality as to whether the establishment 'Bihar Bandhu Misthan Bhandar' is presently existing and functioning.

14. Keeping in mind the errors committed by the Chief Inspecting Officer on facts and in law in passing the impugned order dated 08.10.2001, the same cannot be sustained. Accordingly, the impugned order dated 08.10.2001 passed by him is

set aside.

15. The matter is remanded back to the Chief Inspecting Officer, Bihar, who shall dispose of the same by passing an appropriate order in the light of the observations made hereinabove after hearing the parties and making an on spot inspection within three months from the date of receipt/production of a copy of the order. Further, taking into consideration the peculiar facts of the case, till order is passed by the Chief Inspecting Officer, Bihar afresh, the order dated 29.10.1997 passed by the Inspecting Officer-cum-Labour Superintendent shall be kept in abeyance.

16. With the aforesaid observations and directions, the writ petition is disposed of.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.02.2018
Transmission Date	NA