

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7064 of 2015

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Shambhu Mishra S/o Late Devta Mishra R/o Village - Bathuwarua, Keshrahia
P.S. Bathuwarua District - West Champaran.

.... Petitioner

Versus

1. The State of Bihar.
2. The Commissioner, Tirhut Division, Muzaffarpur.
3. The District Magistrate, West Champaran at Bettiah.
4. The Sub-Divisional Officer cum Licensing Authority, Bagaha, West Champaran.
5. The Executive Magistrate, Bagaha, West Champaran.

.... Respondents

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Appearance :

For the Petitioner : Mr. Shailesh Kumar
Mr. Satish Kumar Sinha, Advocates
For the Respondents : Mr. Kumar Ravish, AC to GA 1

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 09-08-2018

Heard learned counsel for the petitioner as well as
learned counsel for the respondents.

2. The present writ petition has been filed for the
following reliefs –

*“(i) For issuance of a writ of certiorari for quashing of
order dated 15.09.2014 passed by Learned
Commissioner cum Appellate Authority, Tirhut
Division, Muzaffarpur in PDS Appeal No. 89/2010 filed
under Section 29 of the Public Distribution System
(Control Order) 2001, whereby and whereunder the
appeal filed against the order of the Collector and the*



Licensing Authority have not been interfered and the appeal stands dismissed for default despite the attendance of the petitioner.

(ii) For issuance of a writ of certiorari for quashing of order dated 21.05.2010 passed by Learned Collector cum Revisional Authority, West Champaran, Bettiah in CRM Case No. 1/2009-10 filed under Section 15 of the Public Distribution System (Control Order) 2001, whereby and whereunder the appeal filed against the order of the Licensing Authority has not been interfered on a non est ground.

(iii) For issuance of a writ of certiorari for quashing of order dated 28.02.2009 passed by Learned Sub-Divisional Officer cum Licensing Authority, Bagaha, West Champaran, whereby and whereunder the Public Distribution License No. 5/88/103/07 has been cancelled with immediate effect by purported exercise of power contemplated under Section 7(i)(a) and 7(i)(b) of the Public Distribution System (Control Order) 2001.

(iv) For issuance of any other relief/reliefs as may deem fit and proper in the facts and circumstances of the case and for which the petitioner may entitle for.

3. Learned counsel for the petitioner submits that the action of the respondents in suspending the petitioner's PDS licence by order dated 11.06.2008 and thereafter cancelling the same by the impugned order dated 28.02.2009 is wholly arbitrary and illegal inasmuch as the same amounts to double punishment. It is specifically pointed out that the cancellation order has been passed beyond the



statutory period of 90 days during which suspension order was valid. As such, the petitioner had already suffered punishment of suspension and has over again been visited with the punishment of cancellation. Reliance is placed on a Division Bench judgment in *Shiv Chandra Jha vs. Harideo Jha and others*, 2013(3) PLJR 956.

4. Learned counsel for the respondents appears and has been heard.

5. Having heard learned counsel for the parties and on careful consideration of the materials available on record, this Court finds substance in the submission on behalf of the petitioner. Even though the contention based on double punishment has not specifically been raised in the pleadings, the same involves an issue of law and is fit to be considered at this stage. It is borne out from the writ petition itself that the petitioner was visited with an order of suspension dated 11.06.2008 and his PDS licence remained suspended during the validity period of suspension namely 90 days. The impugned order of cancellation dated 28.02.2009 amounts to double punishment as the petitioner has already suffered the penalty of suspension on the same set of charges.

6. Accordingly, the impugned order dated 28.02.2009 (Annexure-4); the appellate order dated 21.05.2010 (Annexure-5) as well as the revisional order dated 15.09.2014 (Annexure-6) are hereby



quashed.

7. The writ petition stands allowed.

8. It is made clear that inasmuch as the relief has been granted on the plea of double punishment as aforesaid, it is not necessary to consider the other issues raised by the petitioner in the writ petition.

(Vikash Jain, J)

B.T/Chandran

AFR/NAFR	NAFR
CAV DATE	N.A.
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Transmission Date	N.A.

