

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6306 of 2014

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Kedar Prasad, S/o Sri Devanandan Sah, Resident of Mohalla - Gareriya Khand,
P.S. - Jehanabad, District - Jehanabad

.... Petitioner

Versus

1. The State of Bihar, through the District Magistrate, Jehanabad
2. Sub Divisional Officer, Jehanabad
3. Rationing Officer, City Area, Jehanabad

.... Respondents

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Appearance :

For the Petitioner : Mr. N.K. Agrawal, Sr. Advocate
Mr. Vijay Anand, Advocate

For the Respondents : Mr. Md. Anisul Haque, AC to AAG 5

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 26-07-2018

I.A. No. 5594 of 2018

As prayed, learned counsel for the petitioner is permitted to make corrections in paragraph 1 of the interlocutory application to the effect that the same has been filed for amendment of the writ petition which was inadvertently missed to be stated, in course of the day. Further the date of the order of the S.D.O., Jehanabad mentioned as "10.03.2016" in the interlocutory application is permitted to be corrected as "10.03.2015".

2. The interlocutory application has been filed for amendment of the writ petition by adding a prayer for setting aside the show cause notice contained in letter no. 606/Aa dated 17.06.2013; and for quashing the order dated 10.03.2015 by which the licensing



authority refused to restore the licence even after acquittal from the criminal case.

3. Having regard to the nature of the prayer, the interlocutory application is allowed and the same is treated as forming part of the writ petition.

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4. The main writ petition has been filed for setting aside the order dated 28.12.2013 passed by learned District Magistrate, Jehanabad in Supply Appeal No. 32/DM/2013 by which he dismissed the appeal filed by the petitioner and confirmed the order dated 09.07.2013 contained in memo no. 726/Aa by which learned Sub-Divisional Officer, Jehanabad cancelled the PDS licence of the petitioner for carrying on trade as an PDS dealer (kerosene oil Thela Vendor) under public distribution system.

5. Learned counsel for the petitioner submits that the foundational show cause notice dated 17.06.2013 does not abide by the requirement of Clause 11(2) of the Bihar Trade Articles (Licenses Unification) Order, 1984 and does not constitute a show cause notice for proposed cancellation but merely contemplates such show cause notice being issued. It is therefore submitted that the order of cancellation dated 09.07.2013 and the appellate order dated 28.12.2013 upholding such cancellation cannot be sustained.



6. It is further submitted that the impugned order dated 10.03.2016 has been passed by the Sub-Divisional Officer, Jehanabad refusing to restore the license of the petitioner despite the fact that the petitioner's conviction on the same set of facts as the cancellation order has been set aside by the learned Sessions Judge, Jehanabad in Criminal Appeal No. 54 of 2014 in terms of the judgment dated 06.02.2015, as a result of which the petitioner has been acquitted of the charges.

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

8. Having regard to the submissions of the parties and on careful consideration of the materials available on record, this Court finds merit in the writ petition. The show cause notice dated 17.06.2013 cannot be said to be a show cause notice for proposed cancellation as contemplated under Clause 11(2) of the Bihar Trade Articles (Licenses Unification) Order, 1984 and hence, the same cannot form the basis of the order of cancellation dated 09.07.2013 nor consequently can the appellate order dated 28.12.2013 be sustained. This Court is further of the view that if the petitioner's conviction on the same set of facts as the cancellation of the licence has been set aside in appeal and the petitioner has been acquitted of the charges, he would be entitled to restoration of the licence in terms of the proviso to Clause 13 of the Bihar Trade Articles (Licenses Unification) Order,



1984.

9. In the above view of the matter, the appellate order dated 28.12.2013 passed by learned District Magistrate, Jehanabad in Supply Appeal No. 32/DM/2013 (Annexure-5); as well as the order of cancellation contained in Memo No. 726 dated 09.07.2013 passed by the Sub-Divisional Officer, Jehanabad (Annexure-3); and the impugned order dated 10.03.2015 (Annexure-2 to the supplementary affidavit) are hereby quashed with a direction to the Sub-Divisional Officer, Jehanabad to restore the licence of the petitioner.

10. The writ petition stands allowed as above.

(Vikash Jain, J)

B.T/Chandran

AFR/ NAFR	NAFR
CAV DATE	N.A.
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