

IN THE HIGH COURT OF JUDICATURE AT PATNA**Civil Writ Jurisdiction Case No.8186 of 2017**

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Shyam Sunder Mahtha S/o Late Siyaram Mahtha, Resident of Village- Ganga Bazar, P.S.-Manigachi (Wajidpur Bazar), District-Darbhanga.

.... Petitioner

Versus

1. The State of Bihar through the Collector, Darbhanga
2. The Collector, Darbhanga.
3. The Sub Divisional Officer, Sadar, Darbhanga.
4. The Block Supply Officer, Manigachi, Darbhanga.

.... Respondents

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Appearance :

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

For the Respondent/s : Mr. Sanjay Kr.Giri-GP9

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 15-01-2018

The present writ petition has been filed for a direction to the respondents to unseal the business premises of the petitioner sealed in connection with Manigachi P.S. Case No. 198 of 2016 dated 30.10.2016 under Section 7 of the E.C. Act because the same is in violation of provisions of PDS Order, 2016 and to set aside the order contained in memo no. 32 dated 20.01.2017 by which the shop of the petitioner has been tagged with another dealer namely, Rajkumar Yadav.

2. Learned counsel for the petitioner has submitted that Manigachi P.S. Case No. 198 of 2016 was registered on allegations of various irregularities said to have been committed by the petitioner. It appears that the informant of the said Manigachi P.S. Case No. 198 of 2016 namely, the Block Supply Officer, Manigachi, Darbhanga



(respondent no. 4) tried to inspect the PDS shop of the petitioner which was, however, found closed. It further appears that the son of the petitioner failed to supply the relevant papers nor the key of the shop and accordingly the Block Supply Officer, Manigachi, Darbhanga (respondent no. 4) sealed the business premises of the petitioner. It further appears that subsequently the shop of the petitioner was tagged with another dealer namely, Raj Kumar Yadav by the impugned order dated 20.01.2017 (Annexure-4).

3. Learned counsel for the petitioner submits that the action of the respondent authorities is wholly arbitrary and without any authority of law. It is pointed out that there is no provision whatsoever in the Bihar Targeted PDS (Control) Order, 2016 (hereinafter referred to as the 'Control Order') which empowers the authorities to seal the business premises of the petitioner.

4. Learned counsel for the respondents relies on the counter affidavit to justify the action of the respondents, *inter alia*, submitting that the respondent authorities have acted in accordance with the Control Order, Clause 31 whereof contemplates the power of entering, inspecting and seizing/sealing of the shop.

5. Having heard the parties and on a consideration of the materials on record, this Court finds merit in the writ petition. For a proper appreciation of the rival contentions of the parties, it is necessary to consider the provisions of Clause 31 of the Bihar



Targeted PDS (Control) Order, 2016, which reads as follows :

"31. Power of Search and Seizure :- (i) The following officers, in their territorial jurisdiction shall be authorized under this Order to enter, inspect, examine, search and seize the premises of a fair price shop or the premises which are related to fair price business:-

- (i) Principal Secretary, Secretary, Special Secretary, Additional Secretary, Joint Secretary, Deputy Secretary and Under Secretary of the Department;*
- (ii) All Divisional Commissioners;*
- (iii) All Deputy Inspector General of Police;*
- (iv) All District Officers;*
- (v) All Superintendent of Police;*
- (vi) All Additional District Magistrates;*
- (vii) All Additional Collectors;*
- (viii) All Deputy Directors, Food and Civil Supplies;*
- (ix) All District Supply Officers;*
- (x) All Sub Divisional Officers;*
- (xi) All Deputy Superintendents of Police;*
- (xii) All Assistant District Supply Officers;*
- (xiii) Magistrate in Charge, Flying Squad constituted by the department;*
- (xiv) All Executive Magistrates;*
- (xv) Special Rationing Officer, Patna;*
- (xvi) Deputy Rationing Officer, Patna;*
- (xvii) All Assistant Rationing Officers, Patna;*
- (xviii) All Block Development Officers;*
- (xix) All Circle Officers;*
- (xx) All Block Supply Officers/In Charge Block Supply Officers;*
- (xxi) All Marketing Officers;*



(xxii) *All Supply Inspectors.*

(ii) *The authorized officer may inspect or seek such records or documents as may be considered by him necessary for examination and he may take extracts or copies of any records or documents produced before him.*

(iii) *If the authorized officer has reasons to believe on receipt of a complaint or otherwise that there has been any contravention of the provisions of this Order or the Central Public Distribution System (Control) Order, 2015, or with a view to securing compliance with these Orders, he may enter, inspect or search the fair price shop or any premises related to transactions of business of the fair price shop.*

(iv) *The authorized officer may also search, seize or remove such books of accounts or stocks of food grains and other commodities where such authority has reason to believe that these have been used or will be used in contravention of the provisions of Central "Targeted Public Distribution System (Control) Order, 2015" or this order.*

(v) *The authorized officer conducting search and seizure under sub-clause (4) shall inform the District Magistrate or an officer authorized by him the details of the search conducted and the stocks of food grains or other commodities so seized.*

(vi) *The provisions of Section 100 of the Code of Criminal Procedure, 1973, relating to search and seizure shall, so far as may be, apply to search and seizure under this Order."*



6. A bare perusal of the aforesaid provisions clearly shows that while the authorities have been empowered to enter and inspect, examine, search and seize documents, records or stocks from the premises of the fair price shop or connected premises, no specific power has been conferred upon the authorities to seal the business premises of a dealer. The respondents have also not pointed out any other provision under the Control Order with reference to which the power to seal the petitioner's shop has been exercised.

7. Under the circumstances, it must be held that the action of the Block Supply Officer, Manigachi, Darbhanga (respondent no. 4) in sealing the shop of the petitioner is *ultra vires* the powers conferred upon him under the provisions of the Control Order and hence the same cannot be sustained. The Block Supply Officer, Manigachi, Darbhanga (respondent no. 4) is accordingly hereby directed to remove the seal from the shop of the petitioner within a period of two days from the date of receipt/production of a copy of this judgment in the presence of the Office-in-charge, Manigachi Police Station.

8. It is made clear that the concerned authorities shall be at liberty to make inventory of the stocks as well as take any samples as may be necessary in connection with Manigachi P.S. Case No. 198 of 2016 at the time of removal of seal from the shop of the petitioner.

9. The writ petition stands allowed, as above.

(Vikash Jain, J)



Chandran/BT

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.02.2018
Transmission Date	NA

