

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6720 of 2017

=====

M/s Agri Clinic & Agri Business Centre, Zero Mile Ahiyapur, Muzaffarpur through its Proprietor Rajiv Ranjan Singh, S/o Shri Rajesh Prasad Singh @ Rajeshwar Singh, Resident of Village- Manikpur & P.O.- Kalyanpur, P.S. Paru, District- Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar through the Agriculture Production Commissioner, Vikash Bhawan, Bailey Road, Patna.
2. The District of Agriculture cum Controller of Fertilizers, Government of Bihar, Vikash Bhawan, Bailey Road, Patna.
3. The Joint Director, Department of Agriculture, Government of Bihar, Tirhut Division, Muzaffarpur.
4. The District Agriculture Officer, District- Muzaffarpur.
5. The Block Agriculture Officer, District- Muzaffarpur.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Alok Kumar Agrawal, Adv.
For the Respondent/s : Mr. Anant Pd.Singh, S.C.-15

=====

CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT
Date: 24-08-2018

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

Petitioner challenges the order dated 14.09.2016 as
contained in Annexure-5 issued by the respondent no. 4, the District
Agriculture Officer, Muzaffarpur whereby the wholesale licence of
fertilizer of the petitioner has been cancelled. Petitioner was a



wholesale dealer of fertilizer under the name of M/S Agri Clinic & Agri Business Centre, Zero Mile Ahiyapur, Muzaffarpur bearing Fertilizer License No. 04 of 2014-17. On the basis of inspection conducted by the Joint Director, Department of Agriculture, Government of Bihar, Tirhut Division, Muzaffarpur on 02.09.2016 certain discrepancies were found. Thereafter the joint team of the Block Agriculture Officer and Fertilizer Inspector with Block Supply Officer, Musahari conducted an inspection on 03.09.2016 and found that the petitioner was engaged in black-marketing of fertilizers. Accordingly, an F.I.R. being Ahiyapur P.S. Case No. 573 of 2016 dated 05.09.2016 under Section 7 (1) (a) (ii) of the Essential Commodities Act was lodged against the petitioner as contained in Annexure-C to the counter affidavit. Thereafter, a show cause notice was issued to the petitioner vide Letter No. 2264 dated 06.09.2016 as contained in Annexure-G to the supplementary counter affidavit stating therein that an F.I.R. has been lodged against the petitioner on the presumption of black-marketing the fertilizers and was asked to show cause within three days why his fertilizer licence be not cancelled.

Learned counsel for the petitioner submits that 700 bags of fertilizer were given and he had maintained the proper register which he has annexed as Annexure-3 showing 700 bags sold to



various retailers and has also produced receipts of the fertilizers received by the retailers. He submits that the order of cancellation is based of an entirely different ground as the cancellation order dated 14.09.2016 states that the fertilizer shop of the petitioner and of one M/S Bajrang Khad Bhandar have the same Khata and Khesra but being different business premises, there was no separate godown for the two business premises. He submits that this aspect was not the ingredients of the show cause notice issued to him and that giving three days time to file reply was highly insufficient. He further submits that no enquiry report of the inquiry conducted by the joint team on 02.09.2016 and 03.09.2016 has been supplied to him.

Learned counsel for the State submits that on the basis of the said two enquiry reports submitted by the inspecting team on 02.09.2016 and 03.09.2016 and on physical verification, the godown of the petitioner was not found separate with M/s Bajrang Khad Bhandar as both have same Khata and Khesra, that the cancellation order has been passed.

Learned counsel for the petitioner, in reply, submits that the allegation of both M/s Bajrang Khad Bhandar and the godown of the petitioner are situated in the same market place, hence, they have the same Khata and Khesra number but are two separate godowns.

Considering the rival submissions of the parties, the



show cause notice issued by the respondents on the enquiry report, the said enquiry report having not supplied to the petitioner vitiates the decision making process as held in C.W.J.C. No. 12559 of 2017 in the case of Krishnadeo Singh Vs. the State of Bihar decided on 03.07.2018. Three days time to file show cause has been held to be clearly insufficient in the case of **Smt. Fulpati Devi Vs. The State of Bihar since reported in 2013 (1) PLJR 718** and on the presumption of black-marketing the FIR lodged against the petitioner and cancellation order has been issued merely on lodging of an FIR has been held to be bad in the case of **Pawan Kumar Vs. The State of Bihar & Ors. since reported in 2009 (4) PLJR 104** para-6 which is extracted below:

“6. Having heard learned counsel of the parties and considered the matter in my view, clause (6) has to be read in harmonious manner. As pointed above, clause (6) consists of two parts. First, a person who has been blacklisted by the Corporation and Second, a person against whom criminal cases are pending. If the view, as made by the Corporation, is to be accepted, it would lead to most arbitrary result. It is well established that mere pendency of criminal case does not lead to any conclusion of guilt. On mere allegation by a party, if a person is to be deprived from his right to business it would amount to a punishment with irreparable injury, for if after five years the allegations are found to



be false, the loss suffered, as a consequence of being deprived of business, cannot be compensated by any one in any manner. Thus, a person would be punished irreparably even on a false acquisition. This, in my view, makes the provision not only arbitrary but unreasonable and thus violative of Articles 14 and 19 of the Constitution. I have mentioned above that the clause (6) has to be read harmoniously. I mean by this that the Corporation itself has used the expression, "person put in blacklist". Thus, reading clause (6), in my view, would mean person blacklisted by the Corporation or person against whom Corporation has instituted criminal proceedings, which could ordinarily lead to blacklisting. Read, thus, there would be grounds for upholding the said clause as reasonable otherwise, it is too widely stated and as already discussed above unreasonable and violative of Constitution."

Considering the fact that no enquiry report was given to the petitioner and show cause notice postulated only three days for filing reply, no enquiry report having been served on the petitioner as well as an alien ground of not having two business premises which was not asked in the show cause and was the basis of cancellation of fertilizer licence of the petitioner without affording an



opportunity of hearing vitiates the decision making process and is in violation of principles of natural justice. The presumption that the petitioner is engaged in black-marketing in pursuance to which an F.I.R. being Ahiyapur P.S. Case No. 573 of 2016 dated 05.09.2016 was lodged is also not a sufficient ground for cancellation of Fertilizer licence as held in the case of Pawan Kumar (supra). Hence, the order dated 14.09.2016 as contained in Annexure-5 is quashed. Supplies to the petitioner be restored forthwith.

This writ application is allowed as above.

(Nilu Agrawal, J)

Priyanka/Devendra

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.08.2018
Transmission Date	NA

