

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3721 of 2021

Most. Durgawati Kunwar wife of Late Hiralal Rai, R/o village - Phuchiti Kala, P.O. and P.S. - Ekma, District - Saran at Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Civil Supplies Department, Government of Bihar, Patna.
2. The Commissioner, Saran Division, Saran at Chapra.
3. The District Magistrate, Saran at Chapra.
4. The Sub-Divisional Officer, Sadar, Saran at Chapra.
5. The Block Supply Officer, Block - Ekma, District- Saran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Krishna Kant Singh, Advocate.
For the Amicus curie	:	Mr. Anand Kumar Ojha, Advocate.
	:	Mr. Sanjeev Kumar Mishra, Advocate.
For the Respondent/s	:	Mr. Alok Ranjan, AC to AAG-5

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 05-10-2021

The present writ petition has been filed for quashing the order dated 20.03.2020 passed by the Sub-Divisional Officer, Sadar, Saran at Chapra whereby and where under the application for restoration of the P.D.S. license of the petitioner bearing PDS License No. 6/08 has been rejected.

2. The brief facts of the case are that the petitioner was granted a Public Distribution System shop license bearing License No. 6/08 situated at Village Phuchiti Kala, Block Ekma, District Saran, whereafter the petitioner had successfully run the shop without any complaint from any corner. On 07.06.2016, an



inspection was conducted by the Block Supply Officer, Ekma and the shop of the petitioner was found closed as also she was found absent apart from the consumers having made complaints regarding illegalities/ irregularities in supply of food grains, kerosene oil etc. The Block Supply Officer, Ekma had also found other irregularities as far as the P.D.S. shop of the petitioner is concerned. The Sub-Divisional Officer, Sadar, Chapra had then issued a show cause notice to the petitioner dated 15.06.2016, to which the petitioner had furnished her reply, however, the Sub-Divisional Officer, Sadar, Chapra had cancelled the P.D.S. shop license of the petitioner vide order dated 19.09.2016. The petitioner had then filed an appeal bearing Supply Appeal No. 33 of 2016 before the District Magistrate, Saran at Chapra, however, the same was also dismissed by an order dated 08.06.2017. Being aggrieved by the aforesaid order dated 08.06.2017, the petitioner had then filed a revision petition bearing Civil Revision No. 127 of 2017, before the Commissioner, Saran Division at Chapra and the learned Commissioner, Saran Division, Chapra, by an order dated 30.10.2019 had found that the subordinate authorities had not considered the factual matrix of the case appropriately as also had come to a conclusion that the cancellation order passed by



the Sub-Divisional Officer, Chapra Sadar as also the order passed by the District Magistrate, Saran at Chapra are arbitrary and illogical, hence had set aside the order dated 19.09.2016 passed by the Sub-Divisional Officer, Sadar, Chapra and the order dated 08.6.2017, passed by the District Magistrate, Saran at Chapra.

3. The petitioner had then filed an application before the Sub-Divisional Officer, Sadar, Chapra (Respondent No. 4) for restoration of her P.D.S. license bearing License No. 6/08, in light of the aforesaid order dated 30.10.2019 passed by the learned Commissioner, Saran Division, Chapra, however, the Respondent No. 4 had issued a show cause notice dated 27.02.2020 pertaining to the irregularities found during the course of the earlier inspection dated 07.06.2016 and had then by the impugned order dated 20.03.2020 rejected the application of the petitioner for restoration of her P.D.S. license.

4. The learned counsel for the petitioner, Shri Krishna Kant Singh, has submitted that the learned Commissioner, Saran Division, Chapra by an order dated 30.10.2019 has not only set aside the order dated 19.09.2016 passed by the Sub-Divisional Officer, Sadar, Chapra but has also set aside the order dated 08.06.2017 passed by the District Magistrate, Saran, on merits



of the case and not on technicalities and has not remanded the matter back to the subordinate authorities for proceeding afresh, hence it was incumbent upon the Sub-Divisional Officer, Sadar, Chapra to have restored the P.D.S. license of the petitioner, but the prayer of the petitioner for restoration of her P.D.S. Shop license has been rejected by the Sub-Divisional Officer, Sadar, Chapra vide an order dated 20.03.2020, which is contrary to the well settled principles of law.

5. This Court had requested Shri Anand Kumar Ojha, Advocate to assist this Court on the legal aspect of the matter, as aforesaid and in response thereof, he has made elaborate submissions on 01.10.2021. The learned counsel Shri Anand Kumar Ojha, advocate (herein after referred to as the “learned Amicus curie”) has submitted that the Bihar Targeted P.D.S. (Control) Order, 2016 is a creature of delegation of Rule Making Power of the State under Section 3 read with Section 5 of the Essential Commodities Act, 1955 (herein after referred to as the “EC Act”). The Parent Act delegates power to regulate distribution of Essential Commodities upon State Authorities under the object of the EC Act which is welfare oriented, virtually aligned with the welfare object emanating from the maxim *sallus populi lex suprema* (Welfare of the State is



Supreme Law). The Control Order has thus as much force as the Mother Act hence the jurisdictions created under the Authorities are strict and as per the provisions in the Control order.

6. The learned Amicus curie, Shri Ojha has further submitted that the Bihar Targeted P.D.S. (Control) Order, 2016 is a compact set of rules creating Authority and Jurisdiction of Licensing Authority, Appellate Authority and Revisional Authority. The Scheme creates exclusive jurisdiction for the Licensing Authority under Rule 26 to implement the provisions of the Control Order in addition to exercise of powers of the Licensing Authority. It refers to duty of the Licensing Authority to ensure implementation of the provisions and includes exclusive jurisdiction to issue show cause notice. The connected subsequent provision of Rule 27 amplifies the circumstance of cancellation of license and provisions of Natural Justice to be followed going by the conjoint reading of Rule 27 (i) and (ii).

7. The learned Amicus curie has further contended that the Bihar Targeted P.D.S. (Control) Order, 2016 postulates the scope and ambit of jurisdiction as also the timeline for such exercise of jurisdiction. The law makers use expressions to sub serve the object of the Act, hence the timeline is strict subject only to the space provided under the Control Order. Rule 27(iii) mandates



disposal of Control Order Violation Cases within two months as far as possible. Again the object is to restore the distribution system by decision one way or the other. Under Rule 32 (iii), the Appellate Authority is vested in the District Collector who has to act within two months subject to the right of filing revision upon non disposal of appeal within 60 days. Here also, the focus is to expedite resolution of dispute and allegations within the frame work of the Control Order and by the Authorities there under. This is a prejudice to a PDS dealer of losing the forum of Appeal and right to access the forum of adjudication because no special powers are given to the Revisional Authority when he takes over the Appeal not decided by the Collector. Thus, it has been submitted by the learned Amicus curie that the Revisional Jurisdiction is a supervisory jurisdiction to oversee and certify compliance of lawful procedure by the authorities down the line. The jurisdiction is confined to legality and propriety of the findings. Unlike appeal the Revisional Authority cannot embark upon appraisal/ appreciation of evidence etc., hence the power of Revisional Authority does not partake that of Appellate Authority and a definite prejudice is caused to a litigant namely loss of forum having co-existent jurisdiction in the continued proceeding to appreciate the evidence, not bound and



untrammelled by the findings of the Licensing Authority.

8. The learned Amicus curie has further submitted that it is a trite law that words used in the statute reflects the object of the Act. Nothing can be added to the words and those words are to be accorded plain and simple meaning. Since the statute is an edict of the legislature, the object of any interpretation would only be to gather Mens or Sententia Legis of the Legislature. Therefore, rightly the Hon'ble Courts always lean to validate the law and make it workable when the language is clear and unambiguous. The case laws are in legion on construction of statutes. What freedom is available to the court in interpreting the constitution is not available while interpreting a statute as the latter requires the thrust on validation and enforcing workability of the statute taking words as they are.

9. Therefore, it is submitted by the learned Amicus curie that the provision of statute must be so clear, as to make it effective and operative. It is also submitted that the procedure provided under the Bihar Targeted P.D.S. (Control) Order, 2016 would show that the main thrust is upon expeditious of the proceeding and attaining finality thereof. The learned Amicus curie has referred to a judgment rendered by the Hon'ble Apex Court in the case of **Associated Cement Co. Ltd. v.**



Keshvanand, reported in (1998)1 SCC 687, paragraphs no. 9 and 10 thereof are reproduced herein below:-

“9. It appears that the learned Single Judge has equated appellate powers with revisional powers, and that the core difference between an appeal and a revision has been overlooked. It is trite legal position that appellate jurisdiction is coextensive with original court's jurisdiction as for appraisal and appreciation of evidence and reaching findings on facts and appellate court is free to reach its own conclusion on evidence untrammelled by any finding entered by the trial court. Revisional powers on the other hand belong to supervisory jurisdiction of a superior court. While exercising revisional powers the court has to confine to the legality and propriety of the findings and also whether the subordinate court has kept itself within the bounds of its jurisdiction including the question whether the court has failed to exercise the jurisdiction vested in it. Though the difference between the two jurisdictions is subtle, it is quite real and has now become well recognised in legal provinces.

10. In *State of Kerala v. K.M. Charia Abdulla & Co.* [AIR 1965 SC 1585 : 16 STC 875 : (1965) 1 SCR 601] this Court has highlighted the difference between the two jurisdictions in the following words:

“There is an essential distinction between an appeal and a revision. The distinction is based on differences implicit in the said two expressions. An appeal is a continuation of the proceedings; in effect the entire



proceedings are before the appellate authority and it has power to review the evidence subject to the statutory limitations prescribed. But in the case of a revision, whatever powers the revisional authority may or may not have, it has not the power to review the evidence unless the statute expressly confers on it that power.”

10. The learned Amicus curie has further referred to a judgment rendered by the Hon’ble Apex Court in the case of **State of Kerala v. K.M. Charia Abdulla and Co.**, reported in AIR 1965 SC 1585 to contend that even though the jurisdiction of the revisional authority is confined to the question of legality or propriety of the order of the subordinate authority, but the Order is required to be passed by the revisional authority, only after examination of the records or such proceedings taken by the subordinate authority. In this connection, the learned Amicus curie has referred to paragraph no. 5 of the afore-said judgment, which is reproduced herein below:-

“5. Even so the revisional authority's jurisdiction is confined to the question of legality or propriety of the order of the regularity of the proceedings. The further limitation on that jurisdiction is that it can only exercise the same on the examination of the record of any order passed or proceedings taken by any authority. The section, therefore, not only limits the scope of its jurisdiction but



also defines the material on the basis of which the said jurisdiction is exercised. The general expression that the authority “may pass such order as he thinks fit” must necessarily be confined to the scope of the jurisdiction. The revisional authority, therefore, cannot travel beyond the order passed or proceedings recorded by the inferior authority and make fresh enquiry and pass orders on merits on the basis of the said enquiry. If it is not construed in this manner, the distinction between appeal and revision would be effaced.”

11. Lastly, the learned Amicus curie has submitted that as far as the instant case is concerned, the revisional authority has passed the final order without any liberty much less an order of remand to the Licensing Authority. Thus the said order has attained finality. The dispute has achieved a resolution and the only authority to re-open the said order would be the Principal Secretary/Secretary of the Department under Clause 32(vii) and that too on the grounds specified in Clause 32(viii) (a, b and c).

12. The learned counsel Shri Sanjiv Kumar Mishra, who has also assisted this Court, has supported the submissions made by the learned Amicus curie, however, he has further added that if the revisional authority had decided the matter on technicalities, it would have been open for the subordinate authority to reopen the matter on merits but the revisional



authority, in the present case, has passed Orders on merits and has not remanded the matter back to the subordinate authority, thus the Sub-Divisional Officer had no option but to restore the P.D.S. license of the petitioner and could not have reopened an old issue, which has already been set at rest by the revisional authority.

13. Per contra, the learned counsel for the Respondent State, Shri Alok Ranjan, AC to AAG-5, has submitted that though it is true that the revisional authority has not remanded the matter back to the subordinate authority, but pursuant to the show cause notice issued by the Sub-Divisional Officer, Sadar, Saran at Chapra vide memo dated 27.02.2020, after passing of the order by the learned Commissioner, Saran Division, Chapra dated 30.10.2019, the petitioner had participated in the proceedings and had submitted her reply as also had appeared in person before the Sub-Divisional Officer, Sadar, Saran at Chapra along with her Advocate and only then the impugned order dated 20.03.2020 has been passed whereby and where under the representation of the petitioner for restoration of her P.D.S. license, has been rejected.

14. I have heard the learned counsel for the parties, have considered the submissions made by the learned Counsel for the



parties as also the Ld. Amicus curie and gone through the materials available on record. This Court finds that under Rule 32 (vi) of the Bihar Targeted P.D.S. (Control) Order, 2016, the licensee has a remedy of filing revision petition against the order passed in appeal, before the Divisional Commissioner and therefore, in the present case, the petitioner had challenged the order passed by the District Magistrate, Saran at Chapra dated 08.06.2017 before the learned Commissioner, Saran Division, Chapra by filing a revision petition bearing Civil Revision No. 127 of 2017. This Court further finds that the learned Commissioner, in his order dated 30.10.2019, has not only considered the materials available on record but has also examined the orders passed by the Sub-Divisional Officer, Saran at Chapra and by the District Magistrate, Saran at Chapra as also has gone through the revision petition filed by the petitioner and considered the submissions made by the learned counsel appearing for the petitioner, whereupon, the learned Commissioner, Saran Division, Chapra has passed the said Order dated 30.10.2019, on merits of the case and has observed that the petitioner has made out a case for interference, especially in view of the fact that correct findings of facts have not been recorded by the subordinate authorities in as much as



the statement of the consumers, taken by way of evidence, has been subsequently denied by the said consumers by way of affidavits produced by the petitioner and moreover, the subordinate authorities have also not considered the factual matrix of the case appropriately. In such view of the matter, the learned Divisional Commissioner, Saran Division, Chapra has come to a conclusion that the cancellation order passed by the Sub-Divisional Officer, Sadar, Saran at Chapra as well as the Order passed by the District Magistrate, Saran at Chapra are arbitrary and illogical, thus, has set aside the same. What is important to note is that while setting aside the orders passed by the Sub-Divisional Officer, Sadar, Saran at Chapra and by the District Magistrate, Saran at Chapra, the learned Commissioner, Saran Division, Chapra has not remanded the matter back for reconsideration, either to the District Magistrate, Saran at Chapra or to the Sub-Divisional Officer, Sadar, Chapra.

15. Yet, another important thing to note here is the provision contained in Rule 32 (vii) of the Bihar Targeted P.D.S. (Control) Order, 2016, which reads as follows:-

“(vii) The Principal Secretary/ Secretary of the department may call for the records related to the order passed under the provisions of this Order by the Divisional



Commissioner or the District Officer or the licensing authority or the Sub Divisional Officer suo motto or upon a representation by someone, and if he is satisfied that the Divisional Commissioner or the District Officer or the licensing authority or the Sub Divisional Officer-

- "(a) has exercised such powers which are not entrusted to him,
- (b) has exercised his powers illegally without considering the facts of the case,
- (c) has failed in use of his powers, he may pass an order which he thinks fit."

16. Thus, this Court is of the view that if at all the matter was required to be reopened, after passing of the revisional order dated 30.10.2019 by the learned Commissioner, Saran Division, Chapra, it could have been effectuated, only by invoking Rule 32 (vii) of the Bihar Targeted P.D.S. (Control) Order, 2016, which, in the present case, has not been resorted to. Therefore, the order dated 30.10.2019, passed by the revisional authority i.e the learned Commissioner, Saran Division, Chapra, has become absolute in absence of invocation of Rule 32(vii) of the Bihar Targeted P.D.S. (Control) Order, 2016 as also in view of the fact that the revisional authority has passed the order dated 30.10.2019 on the merits of the case and not on technicalities, apart from the fact that the revisional authority



has also not remanded the matter back, either to the District Magistrate or to the Licensing authority-cum-Sub-Divisional Officer for the purposes of re-opening the matter and proceeding afresh. Consequently, this Court finds that the Sub-Divisional Officer, Sadar, Chapra has committed a serious error by reopening the matter and refusing to restore the P.D.S. license of the petitioner and/or rejecting the application of the petitioner for restoration of P.D.S. license bearing license No. 6/08.

17. Having regard to the facts and circumstances of the case and for the grounds mentioned herein above, the order dated 20.03.2020 passed by the Sub-Divisional Officer, Sadar, Chapra is quashed, being unsustainable in the eyes of law, with a direction to the Sub-Divisional Officer, Sadar, Chapra to immediately restore the license of the petitioner, bearing License No. 6/08.

18. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	03.11.2021
Transmission Date	N/A

