

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6584 of 2019

=====

M/s. Jai Hind Traders Pathardeva, Sonapur, Block-Narpatganj, District-Araria through its Proprietor Md. Shaukat Ali, son of Md. Shamsher Ali, aged about 39 years, Male, R/o Village-Sonapur Bazar, P.S.-Narpatganj, District-Araria.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Agriculture Department, Government of Bihar, Patna.
2. The Director, Agriculture Department, Government of Bihar, Patna.
3. The District Magistrate, Araria.
4. The District Agriculture Officer, Araria.

... .. Respondent/s

=====

with

Civil Writ Jurisdiction Case No. 7881 of 2019

=====

M/s Uma Kishan Seva Kendra, Pithora Road, Block-Narpatganj, District-Araria through its Proprietor Prasant Kumar Bhagat, son of Jagarnath Bhagat, aged about 29 years, Male, R/o village-Narpatganj, P.S.-Narpatganj, District-Araria.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Agriculture Department, Government of Bihar, Patna.
2. The Director, Agriculture Department, Government of Bihar, Patna.
3. The District Magistrate, Araria.
4. The District Agriculture Officer, Araria.

... .. Respondent/s

=====



with

Civil Writ Jurisdiction Case No. 13150 of 2019

=====

M/s Bhagat Khad Beej Bhandar Harira, Block-Kursakanta, District-Araria through its Proprietor Kundan Kumar Bhagat, son of Dip Narayan Bhagat, aged about 28 years, Male, Resident of Sundari, P.O.-Pahunsi, P.S.-Kursakanta, Block-Kursakanta, District-Araria.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Agriculture Department, Government of Bihar, Patna.
2. The Director, Agriculture Department, Government of Bihar, Patna.
3. The District Magistrate, Araria.
4. The District Agriculture Officer, Araria.

... .. Respondent/s

=====

Appearance :

(In Civil Writ Jurisdiction Case No. 6584 of 2019)

For the Petitioner/s : Ms. Namrata Mishra, Adv.

For the State : Mr. Prabhat Kumar, A.C. to G.A.-11

(In Civil Writ Jurisdiction Case No. 7881 of 2019)

For the Petitioner/s : Mr. Anjani Kumar Jha, Adv.

For the State : Mr. Sarvesh Kumar Singh, A.A.G.-13

Mr. Arya Achint, A.C. to A.A.G.-13

(In Civil Writ Jurisdiction Case No. 13150 of 2019)

For the Petitioner/s : Mr. Anjani Kumar Jha, Adv.

For the Respondent/s : Mr. Jay Prakash Sharma, A.C. to G.P.-21

=====

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)



Date : 24-08-2022

All the three writ petitions, referred to above, have been heard together and are being disposed off by this composite order.

2. Ms. Namrata Mishra, the learned Advocate has assisted this Court on behalf of the petitioner in C.W.J.C. No. 6584 of 2019, whereas Mr. Anjani Kumar Jha, the learned Advocate has argued on behalf of the petitioners in C.W.J.C. Nos. 7881 of 2019 and 13150 of 2019 respectively. Mr. Prabhat Kumar, the learned A.C. to G.A.-11 has represented the State in C.W.J.C. No. 6584 of 2019.

3. Mr. Anjani Kumar Jha, the learned Advocate is permitted to carry out necessary correction in the name of petitioner of C.W.J.C. No. 13150 2019 during the course of the day.

4. In all the three writ petitions, the order of the District Agriculture Officer, Araria has been



impugned, whereby the respective petitioners have been debarred from carrying on the business of sale of fertilizer.

5. Though the writ petitioners have raised a grievance that they have not been noticed before passing the aforesaid order of debarment, but the learned counsel for the State has controverted such argument on the basis of a communication made by the District Agriculture Officer, Araria, contained in Annexure-3 to the writ petition bearing C.W.J.C. No. 6584 of 2019, wherein the dealer was made known that during the evaluation by the authorities, it was found that the fertilizer was not being sold by *e-POS* machine which was a breach of the Fertilizer (Control) Order, 1985 (*in short the Control Order*), entailing cancellation of license. The dealer/dealers were asked to present themselves along with the machine before the District Agriculture Officer. That not having been done, it has been urged on behalf of



the State, the order of debarment has rightly been passed.

6. However, from a perusal of the provisions contained in Section 31 of the Control Order, it appears that the Controller, after giving the authorized dealer an opportunity of being heard, may suspend or debar the dealer for carrying on the business of fertilizer on one or more of the grounds including that the authorization letter or certificate of registration or certificate of manufacture has been obtained by the dealer by willful suppression of material facts or by misrepresentation of relevant particulars or that any one of the provisions of the Control Order or any terms and conditions of the *memorandum* of intimation or certificate of registration or the certificate of manufacture, as the case may be, has been contravened or not fulfilled.

7. It has further been provided that while debarring a dealer from carrying on the business of



fertilizer or cancelling the certificate, he would be allowed a period of thirty days to dispose of the balance stock of fertilizer, if any, held by him. Anything kept back by the dealer beyond the afore-noted period, would be liable to be confiscated.

8. Sub-Clause (2) of Section 31 of the Control Order further provides that if the contravention by the dealer is of such a nature that it justifies his debarment or cancellation, then the Controller may, without any notice, suspend such authorization letter or certificate as an interim measure and shall immediately furnish the details and the nature of contravention to the dealer and after giving him an opportunity of being heard, pass a final order/s either revoking the order of suspension or debarment within fifteen days from the date of issue of the order of suspension. And, if no final order is passed within the period as specified in sub-Clause (2) of Section 31 of the Control Order,



the order of interim suspension shall be deemed to have been revoked without prejudice however to any further action which the authority may take against the dealer under sub-Clause (1). Thereafter, a brief statement of the reason for such suspension, cancellation or debarment has to be made, a copy of which has to be served upon the dealer.

9. The learned counsel for the State has pointed out that all the District Magistrates of Bihar were communicated by the Principal Secretary of the Agriculture Department *vide* notification dated 13th of October, 2017 that in future, the fertilizer shall only be sold through *e-POS* machine and the dealer shall be made available the subsidized fertilizer only on their furnishing the details of sale by the *e-POS* machine and not otherwise. Before the Go-live of the project, a dry run was carried out and a direction was issued to all the District Magistrates that the dealers be intimated that the fertilizer would only be



sold through *e-POS* machine and any contravention of the aforesaid directive would entail necessary action under the Fertilizer Control Order and otherwise.

10. It appears that pursuant to such notification/intimation to the dealers, it was necessary for the dealers to have sold the fertilizer through *e-POS* machine only. It further appears from the records that only when it was found that for good number of months, the petitioners/dealers had not sold the fertilizer through the *e-POS* machine, they were asked to furnish such machines and present themselves before the District Agriculture Officer/Controller and, as an interim measure, they were debarred.

11. However, from the order impugned, namely, the order of debarment, it appears that the District Agriculture Officer has not followed the procedure of debarment and consequent suspension



or cancellation of the license.

12. We have found that the order of debarment has remained inchoate as no further follow-up action has been taken within the specified time limit as prescribed in Clause (2) of Section 31 of the Control Order. If at all the contravention by the dealers/petitioners was found to have justified the order of debarment, it was only an interim measure before the license could be suspended or cancelled, but not without giving to the dealers necessary opportunity of representing their cause. The final order was required to be passed within fifteen days.

13. We also find from the averments made in the writ petitions as also from the counter affidavit that the time for the dealers/petitioners to dispose of their stock of fertilizers after the order of debarment was not given.

14. There also does not appear to be any



move on the part of the authorities/licensing authority/Controller to confiscate the balance fertilizer. No brief statement of reason has obviously been given. Such brief statement/reason can only be given on final order of suspension or cancellation being passed by the authority.

15. Since the procedure delineated under Section 31 (2) of the Control Order has not been followed by the licensing authority/District Agriculture Officer/Controller, we are unable to sustain the order or debarment. It is a matter of grave concern that the provisions of Section 31 (2) of the Control Order has not been carried out in an appropriate manner. There is no follow-up/sequel action after the debarment of the petitioners/dealers.

16. This reflects complete non-application of mind on the part of the District Agriculture Officer.

17. For the reasons afore-noted, we set-



aside the order of debarment and direct the District Agriculture Officer to intimate the dealers/petitioners to present their *e-POS* machine, if not already produced, and offer proof that for the entire period of their dealership before debarment, they had sold the subsidized fertilizer only through the *e-POS* machine. On evaluating the reply of the dealers/petitioners, a final order shall be passed by the District Agriculture Officer, either revoking the order of debarment or finally suspending and cancelling the license of the petitioners.

18. Be it noted that three consequences are contemplated in the event of a dealer not following the directives or the terms and conditions of the Fertilizer Control Order, 1985, *viz.*, debarment, suspension and cancellation. Debarment appears to be the first step towards the final outcome of any proceeding against a dealer.

19. We are constrained to note that after



debarring the petitioners, no further sequel action was taken. This, we reiterate, is the reason for our not sustaining the order of debarment and directing for taking the proceeding against the petitioners to a logical end.

20. However, in the aforesaid facts and circumstances of the case, we further direct the District Agriculture Officer, Araria to apply his mind over the balance subsidized fertilizers supplied to the dealers/petitioners and take a decision whether before any final order is passed, they (the petitioners) be permitted to sell it or that with the passage of time, it has become liable for confiscation.

21. All such orders by the District Agriculture Officer, Araria shall be passed, giving reasons in support of the same. The entire exercise be concluded within a period of sixty (60) days from the date of receipt/production of a copy of this



order.

22. With the aforesaid observations /
directions, the writ petitions stands allowed.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

Praveen-II/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	29/08/2022
Transmission Date	N/A

