

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6878 of 2017

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Santosh Kumar Choudhary S/o Sri Banarsi Choudhary, Resident of Village-
Khagra, Chaprasi Tola, Ward No. 22, P.O. P.S. District- Kishanganj.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The S.D.O. Kishanganj.
3. The Block Supply Officer, Kishanganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vijay Anand, Advocate
For the Respondent/s : Mr. Ajay Kumar, AC to GP-4

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**CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH
SHARMA**

ORAL JUDGMENT

Date : 27-03-2023

The petitioner, by way of this writ petition, has challenged the order dated 09.03.2017, passed by the SDO, Kishanganj whereby the order of cancellation of the PDS license granted to the petitioner dated 12.07.2012 has been directed to be continued on the ground that despite the notice having been sent to the witnesses, they did not turn up.

Learned counsel appearing for the petitioner submits that earlier the petitioner had preferred CWJC No. 1991 of 2014 before this Court against the order of cancellation dated 12.07.2012. This Court, vide its judgment dated 19.07.2016, quashed the impugned order dated 12.07.2022 and remitted the matter back to the licensing authority with a direction to the



licensing authority to take a fresh decision in accordance with law within a period of three months. In pursuance to the said judgment, the petitioner submitted a representation to the authorities concerned whereupon, the respondent directed the petitioner to produce the evidence of the two persons who were witnesses to the seizure memo in the FIR to prove that the petitioner was not indulged in black-marketing. Learned counsel further submits that the petitioner could not have produced the prosecution witnesses. Based on the non-production of the said witnesses, the decision was taken afresh by the respondent and the original order of cancellation dated 12.07.2012 was restored.

Learned counsel submits that if the order was quashed and set aside, there was no occasion to restore the said order. Hence, the entire action of the respondent is vitiated in law and was contrary to the view already taken by this Court in its judgment (*supra*).

Per contra, learned counsel appearing for the State submits that the petitioner has not challenged the order of the SDO in the appeal which is provided under the Orders of 2016. He further submits that in the representation made by the petitioner, it was a ground taken by him that the concerned two witnesses had supported his case and, therefore, he was asked to



produce the two witnesses in support of his averments. An affidavit of the said two witnesses has also been filed by the petitioner. In the circumstances, therefore, no error can be said to have been committed by the licensing authority asking the petitioner to produce the said witness before him.

Learned counsel for the respondent further submits that in pursuance to the judgment dated 19.07.2016 (supra), a fresh inquiry was conducted and sufficient opportunity was afforded to the petitioner whereafter, a decision was taken not to restore his license and, therefore, the order of cancellation passed earlier dated 12.07.2012 was reiterated. Learned counsel submits that while the order of cancellation dated 12.07.2012 was quashed by this Court essentially, the Court had directed the licensing authority to take a fresh decision with regard to the restoration of the license.

I have considered the submissions. While this Court finds that the witnesses Abdul Mazid @ Bablu and Md. Abdullah were asked to be produced by the licensing authority and the onus was put on the petitioner. The said procedure was adopted based on the stand taken by the petitioner in his representation that the consumers had no complaint against him. However, the witnesses which he had mentioned in his



representation were Satyendra Kumar Singh and Jahrin Nisha, but the licensing authority asked the petitioner to produce those witnesses who were witnesses of the seizure memo in the FIR. Such a course could not have been adopted by the licensing authority.

Be that as it may, the petitioner had produced one Satyendra Kumar Singh as a witness in support of his contention, and the licensing authority has concluded that the said witness had no knowledge about the incident of black-marketing. He independently reached to the conclusion that the petitioner's license had been cancelled rightly as the intention of black-marketing has been found to be proved against him. The said order, therefore, cannot be faulted. So far as the question regarding restoration of the order of cancellation dated 12.07.2012 is concerned, this Court is satisfied that it is the cancellation of the license which has been approved by the licensing authority afresh vide its order dated 09.03.2017. Merely, using the words restoring the order dated 12.07.2012 would not make a case in favour of the petitioner who has been found indulging in black-marketing as it means reiterating of the earlier order of cancelling of the license.

It is also noticed that the petitioner did not challenge



the said order in appeal before the appellate authority. The cancellation order was passed on 12.07.2012 and more than 10 years have passed by. The petitioner has not been continuing the PDS shop since 2012 and no purpose would be served even otherwise to restore the license after more than 10 years. Moreso, the petitioner always would be free to apply a fresh if he is otherwise eligible.

As such, the writ petitioner is dismissed.

(Sanjeev Prakash Sharma, J)

Ashwini/-
Item No.44

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.03.2023
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