

(2016) 07 PAT CK 0079

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2660 of 2014

Awadh Kishore Ram

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 19-07-2016

Acts Referred:

Bihar Fair Price Shops Order, 2007 — Clause 7
Constitution of India, 1950 — Article 226

Citation : (2016) 3 BBCJ 154 : (2016) 4 BLJud 112 : (2016) 4 PLJR 176

Hon'ble Judges : Dr. Ravi Ranjan, J.

Bench : Single Bench

Advocate : Ms. Sushmita Mishra, Advocate, for the Petitioner; Mr. Sumant Kr. Singh, A.C. to G.A. 3, for the State

Final Decision : Allowed

Judgement

Dr. Ravi Ranjan, J. (Oral)—Heard parties.

2. Petitioner seeks quashing of Annexure-3 which is an order dated 06.05.2009 passed by the Sub-Divisional Officer-cum-licensing authority, Khagaria as well as the appellate order passed in Supply Appeal No. 13/09-10 dated 26.09.2012 (Annexure-2) and the revisional order passed in Supply Revision No. 51/2013 dated 07.12.2013 (Annexure-1). Vide Annexure-3, the licence of the petitioner has been cancelled.

3. Petitioner applied for grant of leave as he was unable to run PDS shop in view of having developed serious ailment, namely, Hepatitis B. Vide Annexure-4, three months leave was granted to the petitioner and his unit was attached with another PDS dealer so that people of the locality do not suffer. However, when the petitioner did not return even after three months, a show cause notice was issued to report within 24 hours as to why his licence should not be cancelled. The petitioner filed his reply and, thereafter, the petitioner again filed application for extension of leave vide Annexure-7. It stands stated therein that he has not become fit to join the work and he is still under treatment. Though the date has

not been given in the Annexure-7 but it appears from the endorsement that the same was received on 09.04.2009 by the authority concerned, i.e., after the issuance of the show cause notice. However, the petitioner's licence has been cancelled.

4. It is urged that licence has been cancelled on the ground that due to his absence the beneficiaries are suffering, though, in view of the fact that unit of the petitioner was attached with some other PDS dealer, it is not apparent as to how the beneficiaries were made to suffer. It is further contended that the order is based upon the enquiry report dated 03.03.2009 submitted by the Block Supply Officer which was never served upon the petitioner. It is also urged that licence of the petitioner has been cancelled without any reasonable reason given by the authorities.

5. A counter affidavit has been filed on behalf of the State. However, the aforesaid allegations do not appear to have been dealt with in the counter affidavit.

6. Admittedly, the petitioner's shop was attached with one Veena Devi, another PDS dealer, therefore, there was no question of suffering of the beneficiaries due to the absence of the petitioner. That apart, it is not stated in the impugned order that petitioner is taking shelter of false claim of illness. Petitioner's illness has not been disputed. It is not stated that absence is due to some other reason.

7. Thus, in my view, the order impugned is very harsh and the authority concerned was not required to impose extreme punishment of cancellation of licence. That apart, the order appears to have been passed on the basis of opinion given by the Block Development Officer dated 15.04.2009. In my view, such action was wholly without jurisdiction as learned counsel for the State has not been able to point out from the statutory provision that the licensing authority could have obtained opinion of others for coming to a conclusion. He can hold an enquiry himself or he may get it done by some other responsible officer but, having received the enquiry report, he was required to apply his own mind as there is no provision that he will seek opinion of other as to how the order is to be passed even though he himself is the statutory Licensing Authority.

8. Accordingly, it is held that the impugned orders are not sustainable and, as such, the same are quashed and set aside. The authority concerned is directed to restore the licence of the petitioner within a period of two months from the date of receipt/production of a copy of this order.

9. This writ application stands allowed.