(2013) 02 PAT CK 0068

In the Patna High Court

Case No : CWJC No. 18766 of 2011

Baban Ojha APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 07-02-2013

Acts Referred:
Essential Commodities Act, 1955 — Section 7

Citation : (2013) 2 PLJR 636

Hon'ble Judges : Ravi Ranjan, J

Bench : Single Bench

Advocate : Gajendra Nath Ojha and Om Prakash, for the Appellant; Hemanshu Kumar Akela for the State, for the Respondent

Final Decision : Allowed

Judgement

Ravi Ranjan, J.—Heard learned counsel for the petitioner and the State. Petitioner seeks quashing of the order dated 1.12.2003 passed by the Sub-Divisional Officer-cum-Licensing Authority, Jagdishpur, as contained in Annexure-8, as well as the appellate order dated 26.9.2006 and the revisional order dated 30.8.2011 passed by the Collector, Bhojpur at Ara and the Commissioner, Patna Division in Revision Miscellaneous Case No. 2 of 2006-07 and E.C. Revision No. 467 of 2006 as contained in Annexures-11 and 12 respectively.

2. It is submitted on behalf of the petitioner that the agreement of the petitioner for running PDS shop granted under the Bihar Trade Articles (Licenses Unification) Order, 1984 has been cancelled on the basis of certain direction contained in the letter no. 1355 dated 26.3.1998 as well as the letter no. 2151 dated 10.5.2000 and letter no. 2236 dated 16.5.2000 issued by the different departments of the State Government and the direction issued by the District Magistrate-cum-Collector, Bhojpur, Ara contained in memo no. 236(Aa) dated 22.5.2000 and other letters disclosed in the order dated 28.7.2003 as contained in Annexure-8. A show cause notice was issued vide the aforesaid proceeding on

28.7.2003 directing the petitioner to show cause as to why his agreement should not be cancelled in view of the aforesaid letters and the direction of the District Magistrate that if the licences have been issued more than its requirement, i.e., more than what is required for a particular number of customers of the concerned area, then agreement should be cancelled after obtaining show cause.

3. Learned counsel submits that there is no provision under the law for cancellation of agreement on such ground as the agreement can only be cancelled for violation of either the terms and conditions of the licence or the terms and conditions laid down in the agreement. Learned counsel for the petitioner has placed reliance upon a decision of this Court rendered in Taleshwar Jha ''Rahi'' and Others Vs. The State of Bihar and Others, in which the cancellation of agreement on the basis of the aforesaid directive issued by the State Government was under consideration. It has been observed therein that the order cancelling the dealership agreement of the petitioner had left them with valid licences but without business and as a result there would be no supply made to them rendering the licences only illusory. It has not been disclosed in the order as to what was the total number of licensees in the area concerned and in a particular category what was the number of licence that was necessary for arriving at a conclusion that the certain persons including the petitioner were allegedly holding licence in excess of declared policy. Accordingly, it was held that the order cancelling the agreement was perverse. This Court in C.W.J.C. No. 18645 of 2011 has also taken a similar view of the matter and has quashed the order following the decision rendered in Taleshwar Jha ''Rahi'' (supra).

4. This Court would also have no difficulty in following the aforesaid decisions. Thus, it is held that the order of cancellation, without sufficient ground having been disclosed and in view of the law laid down by this Court in Taleshwar Jha ''Rahi'' (supra), is not tenable in law and is, accordingly, set aside.

5. Since it has been stated in the impugned order that the petitioner''s licence was suspended earlier, let the licensing authority consider as to whether such suspension is still continuing and as to whether the same has also outlived its life or not in view of the fact that if the period of such suspension could be maximum of 90 days only. The licensing authority would also be required to consider that the provision of suspension has already been omitted/deleted by the Public Distribution System (Control) Amendment Order, 2011 and subsequently a clarification by the State Government has come for revocation of suspension order immediately if the same is not continuing in view of the any case pending u/s 7 of the Essential Commodities Act, 1955. If the suspension is not continuing in view of the any case pending against the petitioner u/s 7 of the Essential Commodities Act, 1955 then the same is required to be revoked immediately and the petitioner would be entitled for resumption of supplies. Accordingly, this writ application stands allowed.