
(2015) 01 PAT CK 0095

In the Patna High Court

Case No : CWJC Nos. 15767, 15775, 15807, 15822, 15830, 15831, 15846, 15852, 16031 and 16083 of 2014

Geeta Bharati and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-01-2015

Acts Referred:

Citation : (2015) 2 PLJR 249

Hon'ble Judges : Jyoti Saran, J

Bench : Single Bench

Advocate : Sanjeet Kumar, for the Appellant; Vinay Kirti Singh, Advocates for the Respondent

Final Decision : Allowed

Judgement

Jyoti Saran, J.

1. Mr. Nawal Kishore Agrawal, learned senior counsel and Mr. Sanjeet Kumar learned counsel appearing for the petitioners and the counsel for the State have "been heard in these writ petitions. Since in all these writ petitions cyclostyled orders of cancellation of licence of the petitioners have been passed by the Licensing Authority-cum-Sub-Divisional Officer, Khagaria hence they have been taken up together and with the consent of the parties they are being disposed of at the stage of admission itself by this judgment.

2. The petitioners are holders of licence for running a shop under the public distribution system issued under the provisions of the Public Distribution System (Control) Order, 2001 (hereinafter referred to as "the Control Order") read with the Bihar Fair Price Shop Order, 2007. The licences of these petitioners have been cancelled on the basis of a newspaper publication alleging irregularities in running of their respective shops.

3. Mr. Agrawal, learned senior counsel appearing on behalf of the petitioners while questioning the impugned order of cancellation of licence issued in a

cyclostyled manner, has relied upon Clause 7(ii) of Bihar Fair Price Shop Order, 2007 issued under the Public Distribution System (Control) Order, 2001, to submit that the provision specifically creates obligation on the Licensing Authority to give a reasonable opportunity to the licensee against a proposed cancellation and it is only after such opportunity is granted and the licensee is heard in the matter that any order can be passed. Learned counsel has referred to the order of cancellation impugned in the different writ petitions to submit that it is manifest therefrom that the order of cancellation has been passed on the basis of irregularities reported in a Hindi Daily, namely, "Dainik Jagaran" against these petitioners.

4. I have heard learned counsel for the parties and I have perused the materials on records.

5. The factual position in each of the cases is that the licences of the petitioners have been cancelled simply on the basis of the newspaper reports. The legal position is that in the circumstances where the licensing authority proposes to cancel the licence of a licensee holding licence for running a shop under the Public Distribution System then before any order is passed, an opportunity has to be provided to the licensee in terms of Clause 7(ii) of the Fair Price Shop Order, 2007 issued under the Public Distribution System (Control) Order, 2001. The fact that no such opportunity was provided to the petitioners is manifest from the respective orders of cancellation and cannot be contested by learned counsel appearing on behalf of the respondents. The order is plainly indefensible.

6. Since the order of cancellation is almost identical this Court would reproduce the relevant extract of the grounds on which the order of cancellation has been passed as impugned in CWJC No. 15767 of 2014 which in its operative portion runs as follows:--

7. Identical orders passed are put to challenge in other writ petitions.

8. Clause 7(ii) of "the Order" runs as follows:--

"7. Suspension and Cancellation of the licence.--

.....

(ii) If any licensee contravenes any provision or any terms and conditions of license or any of his duties and responsibilities or any order of State Government then without prejudice to any other action that may be taken against him under the Essential Commodities Act, 1955 (Central Act 10 of 1955), his license may be cancelled by the Licensing Authority by written order.

No order of cancellation shall be made under this clause unless the licensee has been given a reasonable opportunity stating its case against the proposed cancellation. The similar matter shall be disposed by the Licensing Authority within a month."

9. It is manifest from the reproductions aforementioned that the order impugned

is in clear teeth of the statutory provisions and thus are unsustainable.

10. For the reasons aforementioned the order of cancellation impugned in each of the writ petitions are set aside and the matters are remitted back to the Licensing Authority-cum-Sub-Divisional Officer, Khagaria to consider the matters afresh and dispose of the same in accordance with law and after opportunity of hearing to the petitioners bearing in mind the statutory stipulations provided under "the Control Order". As a consequence of the order passed hereinabove, the licences of the petitioner(s) stand restored. The writ petitions are allowed.