
(2012) 03 PAT CK 0140
In the Patna High Court
Case No : CWJC No. 20577 of 2010

Jitendra Paswan

APPELLANT

Vs

The Commissioner, Darbhanga Division, Darbhanga and
Others

RESPONDENT

Date of Decision : 13-03-2012

Acts Referred:

Citation : (2012) 2 PLJR 643

Hon'ble Judges : Samarendra Pratap Singh, J

Bench : Single Bench

Advocate : Suresh Kumar, for the Appellant; S.P. Tripathi, for the Respondent

Final Decision : Allowed

Judgement

Samarendra Pratap Singh, J.—The petitioner seeks quashing of the order dated 2.11.2010 passed in Case No. 1/2010-11, whereby the Commissioner, Darbhanga Division, Darbhanga dismissed the revision application as not maintainable. The petitioner also prays for quashing the order dated 28.7.2009 passed in Supply Case No. 85/08-09 whereby the District Magistrate, Madhubani affirmed the order of cancellation of P.D.S. licence of the petitioner. The petitioner states that the licensing officer ought not to have cancelled the petitioner's licence on the directives of District Level Selection Committee. The licensing authority ought to have given independent consideration to the issue and could have passed the order on one way or the other. The petitioner is a P.D.S. dealer bearing licence no. 3/92 under Narhri Gram Panchayat, Block-Khutauna in the district of Madhubani. The licensing authority issued show cause on 28.5.2007 as to why further steps be not taken against him as he had misbehaved with the women consumer and have committed illegality in distribution of Kerosene Oil as well. The show cause filed by the petitioner on 31.5.2007 was not found satisfactory and the S.D.O., Phulparas (the licensing authority) suspended the licence and issued show cause as to why his licence be not cancelled vide memo dated 16.8.2007 contained in Annexure-3. The

petitioner denied the charges in his reply dated 22.8.2007. On the directives of the District Selection Committee headed by the District Magistrate, the licensing officer cancelled the licence vide memo no. 483 dated 1.11.2008.

2. The issue is whether the licensing authority should have cancelled the licence on the directives of District Selection Committee. Clause 7 of the Public Distribution System (Control) Order, 2001 notified in 2007 deals with suspension and cancellation of licence. Both the authority of licensing officer to suspend or cancel the licence and the functions of the District Selection Committee are well defined. Sub-clauses (ii), (iv) and (v) of Clause 7 of the Public Distribution System (Control) Order, 2001 is quoted hereinbelow:-

7. Suspension and Cancellation of the Licence.--(ii) If any licensee contravenes the provision, terms of the licence, duties responsibilities and order of the State Government then the Licensing Authority shall suspend/cancelled the licence by a written order;

(iv) It shall be necessary to ask show cause by the Licensing Authority to licensee before suspending licence. Licensee will be given a reasonable opportunity stating his case against the proposed cancellation;

(v) Suspension of licence shall be for a maximum period of ninety days. In the meantime records relating to suspension of licence should be sent to the District Level Selection Committee within a fortnight from the date of suspension of licence. The Selection Committee after due enquiry shall recommend for revocation of suspension the Licensing Authority shall act accordingly.

3. Clause 7(ii) provides for suspension and cancellation of licence of a P.D.S. dealer by the licensing officer. Clause 7(v) stipulates that records relating to suspension of licence have to be sent to the District Level Selection Committee within a fortnight from the date of suspension of licence.

4. It would appear from bare perusal of sub-clause (v) of Clause 7 that if in an enquiry the Committee comes to the conclusion that suspension was not justified, it would make recommendation for revocation of the same. The function assigned to the Committee is supervisory in nature to make amends if the licence has been suspended unjustifiably. In other words, if the Committee on enquiry is of the view that licence ought not to have been suspended, it would make recommendation for revocation of suspension to the licensing authority which would be binding on him. Sub-clause (v) of Clause 7 has not provided any statutory function to the Selection Committee to direct cancellation of licence.

5. Thus, so far as cancellation of licence is concerned, the District Level Selection Committee is not conferred any power under the provision to issue direction to cancel licence. The Licensing Authority ought to have exercised its own independent mind to the facts of the case without being influenced by the directions of the Committee. Thus, the impugned order of the licensing authority cancelling the licence of the petitioner on the direction of the District Level

Selection Committee is not sustainable in law and is quashed. For similar reasons, the order passed by the Appellate Authority as well as the revisional authority are also quashed. However, it would be open for the licensing authority to proceed afresh against the petitioner in accordance with law. In the result, this writ application is allowed.