
(2014) 07 PAT CK 0084

In the Patna High Court

Case No : CWJC Nos. 14121, 15225, 16651, 18615, 23423, 24022, 24704, 9781 of 2013, 378, 1841 and 8982 of 2014

Khurshid Alam and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-07-2014

Acts Referred:

Citation : (2015) 1 PLJR 839

Hon'ble Judges : Jyoti Saran, J

Bench : Single Bench

Advocate : Manish Kumar, Advocates for the Appellant; Anujeet Sinha, Advocates for the Respondent

Judgement

Jyoti Saran, J.—Since the issues raised in all these writ petitions are identical hence they have been taken up for hearing and disposal side by side. All the petitioners in the writ petitions in question are holding licenses for running a shop under the Public Distribution System issued under the Bihar Trade Articles (Licenses Unification) Order, 1984 (hereinafter referred to as the "Unification Order"). In all the cases the licence of all these petitioners were cancelled by the licensing authority i.e. the Sub-Divisional Officer inter alia on grounds of non-approval of their licenses by the District Selection Committee and the appeal preferred by these petitioners after being considered by the appellate authority i.e. the District Magistrate, the cases were remanded for fresh consideration by the licencing authority for grant of fresh licence if the holders of licence fulfilled all eligibility criteria. Identical orders of cancellation and remand are subject matters of these writ petitions and hence they are being disposed of by a common order. The individual details of the writ petitioners are as follows:

(1) C.W.J.C. No. 14121 of 2013

The licence of the petitioner bearing Licence No. 59A of 2006 was cancelled by the Sub-Divisional Officer, Araria vide order passed on 20.12.2007 and the appeal against the said order preferred by the petitioner bearing District Appeal

No. 236 of 2007-08 was disposed of by the District Magistrate-cum-Collector, Araria vide order passed on 12.2.2008.

(2) C.W.J.C. No. 15225 of 2013

The licence of the petitioner bearing Licence No. 03P/2007 was cancelled by the Sub-Divisional Officer, Araria vide order passed on 20.12.2007 and the appeal against the said order preferred by the petitioner bearing District Appeal No. 76 of 2007-08 was disposed of by the District Magistrate-cum-Collector, Araria vide order passed on 12.2.2008.

(3) C.W.J.C. No. 16651 of 2013

The licence of the petitioner bearing Licence No. 8J of 2006 was cancelled by the Sub-Divisional Officer, Araria vide order passed on 20.12.2007 and the appeal against the said order preferred by the petitioner bearing District Appeal No. 19 of 2007-08 was disposed of by the District Magistrate-cum-Collector, Araria vide order passed on 12.2.2008.

(4) C.W.J.C. No. 18615 of 2013

The licence of the petitioner bearing Licence No. 36J of 2006 was cancelled by the Sub-Divisional Officer, Araria vide order passed on 20.12.2007 and the appeal against the said order preferred by the petitioner bearing District Appeal No. 158 of 2007-08 was disposed of by the District Magistrate-cum-Collector, Araria vide order passed on 12.2.2008.

(5) C.W.J.C. No. 23423 of 2013

The licence of the petitioner bearing Licence No. 2J of 2007 was cancelled by the Sub-Divisional Officer, Araria vide order passed on 20.12.2007 and the appeal against the said order preferred by the petitioner bearing District Appeal No. 260 of 2007-08 was disposed of by the District Magistrate-cum-Collector, Araria vide order passed on 12.2.2008.

(6) C.W.J.C. No. 24022 of 2013

The licence of the petitioner bearing Licence No. 27P of 2006 was cancelled by the Sub-Divisional Officer, Araria vide order passed on 20.12.2007 and the appeal against the said order preferred by the petitioner bearing District Appeal No. 158 of 2007-08 was disposed of by the District Magistrate-cum-Collector, Araria vide order passed on 12.2.2008.

(7) C.W.J.C. No. 378 of 2014

The licence of the petitioner bearing Licence No. 3R of 2006 was cancelled by the Sub-Divisional Officer, Araria vide order passed on 20.12.2007 and the appeal against the said order preferred by the petitioner bearing District Appeal No. 90 of 2007-08 was disposed of by the District Magistrate-cum-Collector, Araria vide order passed on 12.2.2008.

(8) C.W.J.C. No. 1841 of 2014

The licence of the petitioner bearing Licence No. 29A of 2006 was cancelled by the Sub-Divisional Officer, Araria vide order passed on 20.12.2007 and the appeal against the said order preferred by the petitioner bearing District Appeal No. 61 of 2007-08 was disposed of by the District Magistrate-cum-Collector, Araria vide order passed on 12.2.2008.

(9) C.W.J.C. No. 8982 of 2014

The licence of the petitioner bearing Licence No. 11R of 2006 was cancelled by the Sub-Divisional Officer, Araria vide order passed on 20.12.2007 and the appeal against the said order preferred by the petitioner bearing Appeal No. 283 of 2007-08 was disposed of by the District Magistrate-cum-Collector, Araria vide order passed on 12.2.2008.

(10) C.W.J.C. No. 24704 of 2013

The licence of the petitioner bearing Licence No. 17R of 2006 was cancelled by the Sub-Divisional Officer, Araria vide order passed on 20.12.2007 and the appeal against the said order preferred by the petitioner bearing Appeal No. 188 of 2007-08 was disposed of by the District Magistrate-cum-Collector, Araria vide order passed on 12.2.2008.

(11) C.W.J.C. No. 9781 of 2013

The licence of the petitioner bearing Licence No. 16P of 2007 was cancelled by the Sub-Divisional Officer, Araria vide order passed on 20.12.2007 and the appeal against the said order preferred by the petitioner bearing Appeal No. 142 of 2007-08 was disposed of by the District Magistrate-cum-Collector, Araria vide order passed on 12.2.2008.

2. It is an admitted position that the licenses of all these petitioners were granted under the "Unification Order" and which vests the Sub-Divisional Officer with powers to grant licenses. There was no stipulation in the Unification Order regarding seeking approval of the District Level Committee. The Central Government had issued a Public Distribution System (Control) Order, 2001 for regulating the licence issued under the Public Distribution System. However, the same was notified in the State of Bihar vide GSR dated 20.2.2007 under the nomenclature of Fair Price Shop Order, 2007. Clause-2 of the Fair Price Shop Order, 2007 requires the District Level Committee to approve the licenses recommended by the licensing authority i.e. the Sub-Divisional Officer but while making such stipulation, the order in Clause-2 also saves all such licenses which were issued prior thereto and were existing on the date when the order came into force i.e. 20.2.2007. It is not in dispute that the licenses of these petitioners were issued prior to the enforcement of the Fair Price Shop Order, 2007 containing such Clause and by virtue of Clause-2 the licenses issued by the licensing authority under the provisions of the "Unification Order" stood saved. Perusal of the order of cancellation passed by the licensing authority as

impugned in the writ petition manifests that even when there are no complaints as regarding functioning of these petitioners nor they have been found allegedly violating the conditions of licenses, yet the licenses have been cancelled solely on the ground of lack of approval by the District Level Committee.

3. The stand of the State in support of these impugned orders is relying upon some circular dated 31.8.2006 requiring an approval by the District Level Committee. Thus even when the "Unification Order" did not contain any such stipulation requiring approval by the District Level Committee, such requirement which is foreign to the stipulations was sought to be introduced through a departmental circular and it is in the light of these departmental circulars that the orders impugned have been passed. The orders impugned on the face of it are illegal and cannot be upheld.

4. These very issues fell for consideration in a case arising from CWJC No. 14525 of 2008 (Ravi Shankar Mishra vs. The State of Bihar) and a coordinate Bench of this Court vide judgment and order passed on 4.11.2011 taking note of the stipulations as existing on the date under the "Unification Order" and taking note of the fact that there was no such stipulation in the "Unification Order" requiring approval by the District Level Committee and which stipulation was only introduced on 20.2.2007, was pleased to set aside the order of cancellation of licenses. The order of learned Single Judge was tested, by the State in L.P.A. No. 292 of 2013 and which also was dismissed vide judgment and order passed on 14.3.2013.

5. In view of the law settled by this Court which has attained finality and taking into consideration the lawful circumstances existing on the date of grant of licenses to these petitioners, it leaves no room for confusion that the orders impugned in the respective writ petitions cannot be upheld and order of cancellation of licenses as well as the order passed in appeal by the appellate authority as impugned in the respective writ petitions cannot be upheld and are accordingly set aside. The writ petitions are allowed. The licenses of the respective writ petitioners stands restored.