

(2014) 02 PAT CK 0123

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7267 of 2013

Lallan Prasad

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 11-02-2014

Acts Referred:

Citation : (2014) 2 BBCJ 579

Hon'ble Judges : Mr. Kishore Kumar Mandal, J.

Bench : Single Bench

Advocate : Mr. Pancham Lal Jaiswal and Mr. Bhupendra Narayan Yadav, Advocates, for the Petitioner; Mr. Tej Bahadur Singh, AAG VII and Mr. S. Hussain Majeed, A.C. to AAG VII, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. Kishore Kumar Mandal, J.(Oral)—Heard Mr. Jaiswal learned counsel for the petitioner and Mr. Singh, learned AAG 7 for the State.

2. Parties have exchanged the pleadings.

3. The petitioner is a licensee under the Fertilizer (Control) Order, 1985 to deal with the fertilizers. The respondents found the petitioner acting contrary to the terms and conditions of the licence. The fertilizers was seized on 28.07.2011 followed by institution of a criminal case being Lauriya P.S. Case No.128/11 under section 7 of the E.C. Act. The Respondent District Agriculture Officer, West Champaran by an order dated 03.08.2011 (Annexure-6) cancelled the licence of the petitioner. Aggrieved by these actions, the petitioner filed an application before the Respondent-Joint Director which was considered and rejected by order dated 05.03.2013 (Annexure-7). The present writ application questions the sustainability/legality of both the orders as contained in annexures-6 and 7. The matter was heard on 04.12.2013 when this Court passed the following order:-

"Let the sale proceeds of the fertilizers sold and deposited in the Treasury be released to the petitioner on furnishing surety to the satisfaction of the criminal

court before whom Lauriya P.S. Case No. 128 of 2011 dated 28.07.2011 is pending. Needless to mention that the surety need not be in the shape of cash or Bank guarantee. This would, however, be subject to the result of the criminal case and subject to the confiscation proceeding and objection as may be raised by the petitioner."

4. It thus appears that the fertilizer so seized from the petitioner has already been sold at the rate at which they were required to be sold and the sale proceeds thereof was deposited in the Treasury. Under orders of this Court the amount of sale proceeds has already been paid to the petitioner which has been made subject to the result of the criminal case so lodged against the petitioner.

5. In the counter affidavit filed on behalf of respondent nos. 3,4 and 5 it has been stated as under in paragraph 5 thereof:-

"5. That the answering respondents humbly submit that prior to the cancellation of the licence of the petitioner, no notice was issued to the writ petitioner. The then District Agriculture Officer Mr. Shailesh Kumar made written complaint before the S.H.O., Lauria Police Station and on the basis of that written complaint Lauria P.S. Case No.128/11 dated 28.07.2011 was instituted and accordingly fertilizers were seized by D.A.O., West Champaran."

6. Any action which is punitive in nature is required to be passed after complying with the principles of natural justice. The petitioner apparently was not afforded an opportunity to submit his cause against the proposed action. True it is that the petitioner has not brought to the notice of the Court any statutory provision in breach whereof the said order has been passed but it has been strenuously argued that the order being in gross breach of the principles of natural justice merits be interfered with and quashed.

7. Considering the stand taken by the parties noticed hereinabove and the pleadings on record it is found that the petitioner was not afforded any opportunity to submit his cause against the proposed actions before passing the order as contained in Annexure-6. This Court is persuaded to interfere with the said order dated 03.08.2011 passed by the Respondent District Agriculture Officer as contained in Annexure-6. The said order is quashed and set aside. Consequently, the appellate order dated 05.03.2013 passed by the Joint Director of Agriculture, Muzaffarpur, as contained in Annexure-7, is also quashed and set aside.

8. The order present shall, however, not preclude the respondent(s) from taking appropriate action if the circumstances so warrant against the petitioners but after affording him an opportunity of filing show cause. The order present shall have no impact on the order of release of the sale proceeds in favour of the petitioner which has already been made subject to the result of the criminal proceeding/confiscation proceeding pending against the petitioner.