
(2022) 10 PAT CK 0010

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 6770 Of 2019

M/S. Shakti Fertilizer @ Shakti Traders Pathardev

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 13-10-2022

Acts Referred:

Fertilizer(Control) Order, 1985 — Section 31, 31(2)

Citation : (2022) 10 PAT CK 0010

Hon'ble Judges : Ashutosh Kumar, J;Jitendra Kumar, J

Bench : Division Bench

Advocate : Namrata Mishra, Anjani Kumar Jha, Dhurjati Kumar Prasad

Final Decision : Allowed

Judgement

1. Heard Ms. Namrata Mishra, learned Advocate for the petitioner and Mr. Dhurjati Kumar Prasad, GP-14, for the State.
2. The petitioner has challenged the order of the District Agriculture Officer, Araria, whereby he has been debarred from carrying on the business of sale of fertilizer.
3. Though the writ petitioner has raised a grievance that he was not noticed before passing the aforesaid order of debarment, but the learned counsel for the State has controverted such argument on the basis of a communication made by the District Agriculture Officer, Araria, contained in Annexure-3 to the writ petition bearing C.W.J.C. No.6584 of 2019, wherein the dealer was made known that during the evaluation by the authorities, it was found that the fertilizer was not being sold by e-POS machine which was a breach of the Fertilizer(Control) Order, 1985 (in short the Control Order), entailing cancellation of license. The petitioner was asked to present himself along with the machine before the District Agriculture Officer. That not having been done, it has been urged on behalf of the State, the order of debarment has rightly been passed.
4. However, from a perusal of the provisions contained in Section 31 of the

Control Order, it appears that the Controller, after giving the authorized dealer an opportunity of being heard, may suspend or debar the dealer for carrying on the business of fertilizer on one or more of the grounds including that the authorization letter or certificate of registration or certificate of manufacture has been obtained by the dealer by willful suppression of material facts or by misrepresentation of relevant particulars or that any one of the provisions of the Control Order or any terms and conditions of the memorandum of intimation or certificate of registration or the certificate of manufacture, as the case may be, has been contravened or not fulfilled.

5. It has further been provided that while debarring a dealer from carrying on the business of fertilizer or cancelling the certificate, he would be allowed a period of thirty days to dispose of the balance stock of fertilizer, if any, held by him. Anything kept back by the dealer beyond the afore-noted period, would be liable to be confiscated.

6. Sub-Clause (2) of Section 31 of the Control Order further provides that if the contravention by the dealer is of such a nature that it justifies his debarment or cancellation, then the Controller may, without any notice, suspend such authorization letter or certificate as an interim measure and shall immediately furnish the details and the nature of contravention to the dealer and after giving him an opportunity of being heard, pass a final order/s either revoking the order of suspension or debarment within fifteen days from the date of issue of the order of suspension. And, if no final order is passed within the period as specified in sub-Clause (2) of Section 31 of the Control Order, the order of interim suspension shall be deemed to have been revoked without prejudice. However, to any further action which the authority may take against the dealer under sub-Clause (1). Thereafter, a brief statement of the reason for such suspension, cancellation or debarment has to be made, a copy of which has to be served upon the dealer.

7. The learned counsel for the State has pointed out that all the District Magistrates of Bihar were communicated by the Principal Secretary of the Agriculture Department vide notification dated 13th of October, 2017 that in future, the fertilizer shall only be sold through e-POS machine and the dealer shall be made available the subsidized fertilizer only on their furnishing the details of sale by the e-POS machine and not otherwise. Before the Go-live of the project, a dry run was carried out and a direction was issued to all the District Magistrates that the dealers be intimated that the fertilizer would only be sold through e-POS machine and any contravention of the aforesaid directive would entail necessary action under the Fertilizer Control Order and otherwise.

8. It appears that pursuant to such notification/intimation to the dealer, it was necessary for the dealer to have sold the fertilizer through e-POS machine only. It further appears from the records that only when it was found that for good number of months, the petitioner had not sold the fertilizer through the e-POS machine, he was asked to furnish such machines and present himself before the

District Agriculture Officer/Controller and, as an interim measure, he was debarred.

9. However, from the order impugned, namely, the order of debarment, it appears that the District Agriculture Officer has not followed the procedure of debarment and consequent suspension or cancellation of the license.

10. We have found that the order of debarment has remained in choate as no further follow-up action has been taken within the specified time limit as prescribed in Clause (2) of Section 31 of the Control Order. If at all the contravention by the petitioner was found to have justified the order of debarment, it was only an interim measure before the license could be suspended or cancelled, but not without giving to the dealer necessary opportunity of representing his cause. The final order was required to be passed within fifteen days.

11. We also find from the averments made in the writ petition as also from the counter affidavit that the time for the petitioner to dispose of his stock of fertilizers after the order of debarment was not given.

12. There also does not appear to be any move on the part of the authorities/licensing authority/Controller to confiscate the balance fertilizer. No brief statement of reason has obviously been given. Such brief statement/reason can only be given on final order of suspension or cancellation being passed by the authority.

13. Since the procedure delineated under Section 31 (2) of the Control Order has not been followed by the licensing authority/District Agriculture Officer/Controller, we are unable to sustain the order of debarment. It is a matter of grave concern that the provisions of Section 31 (2) of the Control Order has not been carried out in an appropriate manner. There is no follow-up/sequel action after the debarment of the petitioner.

14. This reflects complete non-application of mind on the part of the District Agriculture Officer.

15. For the reasons afore-noted, we set aside the order of debarment and direct the District Agriculture Officer to intimate the petitioner to present his e-POS machine, if not already produced, and offer proof that for the entire period of his dealership before debarment, he had sold the subsidized fertilizer only through the e-POS machine. On evaluating the reply of the petitioner, a final order shall be passed by the District Agriculture Officer, either revoking the order of debarment or finally suspending and cancelling the license of the petitioner.

16. Be it noted that three consequences are contemplated in the event of a dealer not following the directives or the terms and conditions of the Fertilizer Control Order, 1985, viz., debarment, suspension and cancellation. Debarment appears to be the first step towards the final outcome of any proceeding against a dealer.

17. We are constrained to note that after debarring the petitioner, no further sequel action was taken. This, we reiterate, is the reason for our not sustaining the order of debarment and directing for taking the proceeding against the petitioner to a logical end.

18. However, in the aforesaid facts and circumstances of the case, we further direct the District Agriculture Officer, Araria to apply his mind over the balance subsidized fertilizers supplied to the petitioner and take a decision whether before any final order is passed, he (the petitioner) be permitted to sell it or that with the passage of time, it has become liable for confiscation.

19. The District Agriculture Officer, Araria shall pass orders, giving reasons in support of the same. The entire exercise be concluded within a period of sixty (60) days from the date of receipt/production of a copy of this order.

20. With the aforesaid observations /directions, the writ petition stands allowed.