

(2000) 03 PAT CK 0181
In the Patna High Court
Case No : L.P.A. No. 422 of 1999

Ramautar Sinha

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 09-03-2000

Acts Referred:

Citation : (2000) 4 PLJR 185

Hon'ble Judges : B.P. Singh, J;A.K. Ganguly, J

Bench : Division Bench

Advocate : Ram Shankar Das, for the Appellant;

Final Decision : Allowed

Judgement

1. We have heard the counsel for the parties. The appellant is aggrieved by the impugned judgment and order of the learned Judge of this Court dated 11.6.1999 in C.W.J.C. No. 7071/98 dismissing his writ petition in which the appellant had made a grievance about the cancellation of his license issued under the Unification Order, 1984 by the District Magistrate, Nawadah. The learned Judge dismissed the writ petition on a finding that under clause 2 (1) of the Unification Order the licensing authority has been defined as meaning an officer not below the rank of the S.D.O. appointed by the State Government to exercise all the powers and perform the duties of licensing authority. In view thereof the definition did not exclude an officer higher in rank than the S.D.O. The question is not res integral because it is covered by a (sic) Bench decision of this Court in the case of M/s Parwati Bhandar vs. The State of Bihar & ors. reported in 1991 (2) PLJR 774. It has been held that even if the Government may appoint a Collector as the licensing authority it does not follow that in every case the Collector shall act as the licensing authority.

2. It is well settled that the definition of the Licensing authority does enable the Government to appoint any Officer not below the rank of S.D.O. to perform the duties of the licensing authority. In each case, therefore, the question arises as

to whether the District Magistrate or the S.D.O. or any other officer has been appointed as the licensing authority. It is only the licensing authority who can suspend or cancel the licence in terms of clause 11 of the Unification Order.

3. Clause 27 (c) of the Unification Order provides that :

The Sub-divisional Officer or the Special Officer (Rationing) shall be the licensing authority in respect of retail trade or any articles specified in Schedule i within the limits of their jurisdictions.

4. In this case, the appellant has pleaded that the licence issued to him was issued by the S.D.O. acting as the licensing authority. However, the same has been cancelled by the District Magistrate, Nawadah, who was really the appellate authority to whom an appeal could be taken against an order passed by the licensing authority. The submission must be upheld. The District Magistrate has not cancelled the agreement between the appellant and the District Magistrate authorizing the appellant to function as a dealer under the Public Distribution System. He has cancelled the licence bearing No. 81/89 (Annexure-1) which was issued by the licensing authority under the Unification Order. In our view the order of cancellation of the licence is clearly without jurisdiction because the District Magistrate had no jurisdiction to cancel the licence granted to the appellant by the S.D.O. as the licensing authority under the Unification Order. This appeal is, therefore, allowed and the impugned order of cancellation of licence dated 12.4.1998, Annexure-4 to the writ application, is quashed.