
(2014) 07 PAT CK 0025
In the Patna High Court
Case No : CWJC No. 16924 of 2013

Ramrati Devi

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 11-07-2014

Acts Referred:

Citation : (2015) 3 PLJR 273

Hon'ble Judges : Jyoti Saran, J

Bench : Single Bench

Advocate : Umesh Kumar, Advocate for the Appellant; Himanshu Kumar, Advocate for the Respondent;

Final Decision : Allowed

Judgement

Jyoti Saran, J.

1. Heard Mr. Umesh Kumar, learned counsel appearing on behalf of the petitioner and Mr. Himanshu Kumar, learned Assisting Counsel to Government Advocate No. 1 for the State. The petitioner has questioned the order dated 13.1.2010 passed by the licensing authority under the Public Distribution System (Control) Order, 2001 (hereinafter referred to as "the Control Order") read with the Fair Price Shop Order, 2007 as amended from time to time, i.e. the Sub-Divisional Officer, Jehanabad, whereby the licence of the petitioner bearing No. 35 of 2007 was suspended and while passing such order a notice of show cause requiring the petitioner to respond as to why his licence be not cancelled was also issued. The order is impugned at Annexure-5. The petitioner also questions the subsequent order dated 31.3.2010 bearing Memo No. 27 passed by the licensing authority whereby the licence of the petitioner has been cancelled as contained in Annexure-6 as well as the order dated 2.12.2011 passed by the appellate authority being the District Magistrate-cum-Collector who by the said order has dismissed the appeal filed by the petitioner under clause 15 of "the Control Order" bearing Case No. 8/D.M. of 2010 as contained in Annexure-7.

2. Mr. Umesh Kumar, learned counsel appearing for the petitioner has made a very short submission to question the impugned orders. He submits that once the respondents have chosen to impose a penalty of suspension of licence vide order passed on 13.1.2010 the show cause notice against the cancellation of licence and the consequential order passed on 31.3.2010 as well as the appellate order dated 2.12.2011 are illegal and unsustainable inasmuch as the suspension and termination of licence being two distinct punishments under "the Control Order" the petitioner could not have been saddled with both the punishments for the same offence as held by a Division Bench judgment of this Court rendered in the case of Shiv Chandra Jha Vs. Harideo Jha and Others, .

3. I have heard learned counsel for the parties and I have perused the records.

4. Mr. Kumar, appearing for the State could not contest the legal position emanating from the Division Bench pronouncement of this Court rendered in the case of Shiv Chandra Jha (supra), whereby the Division Bench has held that suspension and cancellation of licence being two distinct punishments under the Control Order, a licence holder cannot be saddled with both the punishments for the same offence.

5. Following the settled legal position since the licensing authority by the impugned order dated 13.1.2010 has already chosen to impose the punishment of suspension, the show cause notice issued under the same order in respect of cancellation of licence together with the order of cancellation dated 31.3.2010 as well as the appellate order dated 2.12.2011 cannot be upheld and are accordingly set aside. Since under the Fair Price Shops Order, 2007 the maximum period for which a licence can be suspended, other than where it is suspended for criminal offence, is 90 days, the licence of the petitioner stands restored. The writ petition is allowed.