
(2002) 07 PAT CK 0033
In the Patna High Court
Case No : C.W.J.C. No. 7903 of 2002

Vijay Kumar Rana

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-07-2002

Acts Referred:

Citation : (2002) 4 PLJR 120

Hon'ble Judges : P.K. Deb, J

Bench : Single Bench

Advocate : N.K. Agrawal, for the Appellant; S.B.N. Singh, for State, for the Respondent

Judgement

P.K. Deb, J.—Heard learned Counsel for the Petitioner and the State.

2. This writ petition has been filed for quashing the Memo No. 1483 dated 2.11.2002 issued by the District Transport Officer (Licensing Authority) Muzaffarpur canceling the licence of the Petitioner granted under Clause-8 of the Bihar Motor Spirit and High Speed Diesel Oil Dealer's Licensing Order, 1966 and also for quashing of the appellate order passed by the Transport Commissioner, Bihar, Patna on 18.5.2002 by which the appeal filed by the Petitioner had been dismissed. On previous occasion against the order passed by the Licensing Authority the Petitioner came up before this Court in C.W.J.C. No. 5502 of 2002 and during the pendency of that writ petition the appeal filed against the order of the Licensing Authority before the Commissioner had been disposed of and in that way, the writ petition was dismissed as being in fructuous but liberty was given to the Petitioner to move before the appropriate forum for redressal of his grievances. Hence, the present writ petition has been filed.

3. The licence of the Petitioner has been cancelled only on the ground that retail shop is situated within the radius of ten kilometres from the retail out let held by another person Raghunath Prasad. The Licensing Authority in its order at annexure-4 held that this situation has been suppressed by the Petitioner while

applying for licence. The appellate authority had also upheld the rejection of licence order on the same line that there shall be no retail out let of two dealers within a radius of ten kilometres. It is not the condition of the Bihar Motor Spirit and High Speed Diesel Oil Dealers Licensing Order, 1966. This condition has been imposed only in the year 1986 by a letter addressed to all the District Magistrates by the Transport Authority. Admittedly, annexure-6 the letter is the administrative instruction and such administrative instruction cannot be construed to be the terms and conditions under the Licensing Order itself. Similar question was raised before the Apex Court in the case of State of U.P. v. Daulat Ram Gupta as reported in E.F.R. 2002 (2) 13. It was held that administrative instruction cannot take away or include any further terms and conditions in the Licensing Order itself. In that way, the decision on which the Petitioner's licence has been cancelled by annexures-4 and 5 are beyond the scope and hence quashed.

4. This writ petition is disposed of accordingly.