

Girani Ram Vs. the State of Bihar and ors

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Court : Patna

Decided On : May-19-2012

Appellant : Girani Ram

Respondent : The State of Bihar and ors

Judgement :

Patna High Court LPA No.1572 of 2010 (5) dt.19-01-2012 IN THE HIGH COURT OF JUDICATURE AT PATNA Letters Patent Appeal No.1572 of 2010 In Civil Writ Jurisdiction Case No. 9619 of 2008

===== 1. Girani Ram S/O Late Lakhan Ram R/O Vill.- Jamal Bigha, P.S. And Distt.- Sheikhpura Appellant/s Versus 1. The State Of Bihar 2. The Secretary Department Of Food And Consumer Protection, Government Of Bihar, Patna 3. The District Magistrate, Sheikhpura 4. The Sub-Divisional Officer, Sheikhpura Respondent/s

===== Appearance : For the Appellant/s : Mr. D.N.Tiwari For the Respondent/s : Mr. (Sc7)

===== CORAM: HONOURABLE JUSTICE SMT. T. MEENA KUMARI and HONOURABLE MR. JUSTICE GOPAL PRASAD ORAL ORDER (Per: HONOURABLE JUSTICE SMT. T. MEENA KUMARI

19. 01-2012 The present appeal has been filed against the order dated 05.08.2010 passed by the learned Single Judge in C.W.J.C. No. 9619 of 2008. The appellant is the petitioner who is aggrieved by the order contained in Annexure-7 dated 29th

March 2008 passed by the Sub-Divisional Officer, Sheikhpura cancelling Kerosene Oil Thela License No. 05/85. The authorities have cancelled the license of the appellant as he was punished under Section 325 and 504 of the I.P.C. under the judgment dated 17th March, 2004 passed by the Additional Chief Judicial Magistrate, Sheikhpura and the said conviction was affirmed by the 1st Additional Sessions judge, Munger vide judgment dated Patna High Court LPA No.1572 of 2010 (5) dt.19-01-2012 16.01.2007 (Annexure-2) passed in Criminal Appeal No. 49 of 2004. He was also subjected to a Criminal Revision No. 196 of 2007 which is still pending in the criminal court since 15th March, 2007. Learned senior counsel has further argued that learned Single Judge was not inclined to accept the contention of the petitioner appellant that the conviction was not under any offence contravention to the order issued under the Essential Commodities Act, 1955, but however it is under Section 324 and 504 I.P.C. Hence the license cannot be cancelled at the behest of the State Government. Learned senior counsel has however brought to the notice of the Court the provision of section 7 of Bihar Control Order (Supplement) which leads suspension and cancellation of the license. The learned senior counsel has argued that it is not an offence which arises for contravention of any order under the Essential Commodities Act as such the license cannot be suspended as the alleged offence was under Section 324 and 504 of the I.P.C. and not under the Essential Commodities Act. Learned Government Pleader submitted that as the appellant was subjected to punishment under Section 324 and 504 I.P.C. hence the authority decided to cancel the license no. 05/85 which cannot be found fault with. We had also an occasion to go through the provision of Section 7 of the Bihar Control Order (Suppl) which deals as Patna High Court LPA No.1572 of 2010 (5) dt.19-01-2012 follows:- 7. Suspension and Cancellation of the Licence:- (i) In the light of Honble Supreme Court order in Civil Writ petition 196/2001, action will be taken against the licensee in following situation:- Licensees, who (a) do not kept their shops open throughout the month during the stipulated period, (b) fail to provide grain to BPL families strictly at BPL rates and no higher, (c) kept the cards BPL household with them, (d) make false entries in the BPL cards, (e) engage in black marketing or siphoning away grains to the open market and hand over such ration shops to such other person/organizations shall make themselves liable for cancellation of

their license. The concerned authorities/ functionaries would not show any laxity on the subject. (ii) if any licensee contravenes the provision, terms of the licence, duties responsibilities and order of State Government then the Licensing Authority shall suspend/Canceled the licence by a written order, (iii) if F.I.R. is lodged against FPS dealers for contravention of an order issued under Essential Commodities Act, 1955, their licence shall be suspended till the matter is pending before the Court of Law. (iv) It shall be necessary to ask show cause by the Licensing Authority to licensee before suspending licence. Licensee will be given a reasonable opportunity stating his case against the proposed cancellation, (v) Suspension of licence shall be for a maximum period of ninety days. In the mean time records relating to suspension of licence should be sent to the District Level Selection Committee within a fortnight from the date of suspension of licence. The Selection Committee after due enquiry shall Patna High Court LPA No.1572 of 2010 (5) dt.19-01-2012 recommend for revocation of suspension the Licensing Authority shall act accordingly. (vi) Allocation of FPS dealers shall not be discontinued under any circumstance. In case of suspension or cancellation of licence allocation to a FPS dealer should be tagged to the nearest FPS dealer, (vii) After suspension of license of the Licensee the consumers shall be tagged to the nearest FPS shops by the respective Block Supply Officer/In charge Block Supply Officer/Supply Inspector. (viii) In general circumstances the tagging of consumers shall not be changed, (ix) All Consumers of APL, BPL, and Antyodaya living within the area earmarked for a FPS dealer should be tagged to such a FPS dealer. Sub-clause-III of Section-7 of the order makes it clear that if F.I.R. is lodged against FPS dealers for contravention of an order, issued under Essential Commodities Act, 1955, their licence shall be suspended till the matter is pending before the Court of Law. This is a case where the appellant was convicted for an offence under Sections 304 and 504 I.P.C. and not for contravention of any order issued under the Essential Commodities Act. There is no material placed before this Court by the learned Government Pleader that the appellant was convicted for any violation of any order issued under the Essential Commodities Act, 1955 or any case is pending against him under the Essential Commodities Act. Under the above circumstances, as the offence is independent and not under the provision of Essential Patna High Court LPA No.1572 of 2010 (5) dt.19-01-2012 Commodities

Act, we are of the opinion that the order as contained in Annexure-1 passed by respondent no.4 has to be set aside. Accordingly, it is set aside and this L.P.A. is allowed. (T. Meena Kumari, J) PRAVIN KUMAR/- (Gopal Prasad, J)

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