

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 3063 of 1987

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M/S Soch Ram Bishwanath Prasad through its one of the partners Bishwanath Prasad, resident of Station Road, Gopalganj.

.... Petitioner

Versus

1. The State of Bihar.
2. The District Magistrate, Gopalganj.
3. The Sub-Divisional Officer, Gopalganj.

.... Respondents

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Appearance :

For the Petitioner : Mr. Y.V. Giri, Sr. Advocate
Mr. Nikhil Kumar Agrawal, Advocate

For the Respondents : Mr. G.P.-5

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 10-08-2015

We have heard Mr. Y.V. Giri, learned Senior Counsel, appearing on behalf of the petitioner, as well as learned counsel, appearing on behalf of the respondents-State of Bihar.

2. Mr. Y.V. Giri, learned Senior Counsel, at the very outset, has confined the reliefs, as sought in the writ application,



for quashing of order, dated 05/07/1987, issued by the District Magistrate, Gopalganj, whereby the licence of the petitioner for dealing in Kerosene Oil granted under Bihar Kerosene Oil Dealers' Licensing Order, 1965/Bihar Trade Articles (Licences Unification) Order, 1984 (*hereinafter referred to as the "Unification Order"*), came to be suspended in exercise of power under Clause - 11 of the Unification Order.

3. Without raising the issue of constitutional validity of Clause - 11 of the said Unification Order, Mr. Y.V. Giri, learned Senior Counsel, appearing on behalf of the petitioner, has submitted that under Clause - 11 of the Unification Order, a licence could be suspended only for a period of 90 days, whereafter the order of suspension of licence cannot be allowed to continue. In support of his submission, he has referred to Clause - 11 of the said Unification Order, which reads thus:-

"11. Suspension and cancellation of Licence.—

(1) If any licensee or his agent or servant or any other person acting on his behalf contravenes any of the terms and conditions of the licence, then without prejudice to any other action that may be taken against him under the Essential Commodities Act, 1955 (Central Act 10 of 1955) his licence may be cancelled or suspended with regard to one or more trade articles by an order in writing of the Licensing Authority and an entry will be made in his licence relating to such suspension or cancellation.



(2) No order of cancellation shall be made under this Clause unless the licensee has been given a reasonable opportunity stating his case against the proposed cancellation but during the pendency or in contemplation of proceedings of cancellation of licence, the licence can be suspended for a period not exceeding 90 days without giving any opportunity to the licensee of stating his case. Such suspension shall be limited only to those trade articles regarding which contravention has been made by the licensee."

4. Mr. Giri, learned Senior Counsel, has further submitted, which fact has not been disputed, that till date, no proceeding for cancellation of the petitioner's licence, as contemplated in Clause - 11 of the control orders, has been taken despite an order of this Court, dated 22/07/1987, passed in this case.

5. We find force in submission made on behalf of the petitioner that the order of suspension of the petitioner's licence cannot be allowed to continue anymore as the respondents have not concluded the cancellation proceeding despite order of this Court, dated 22/07/1987, which reads thus:-

"Learned counsel for the State makes us to understand that the entire cancellation proceeding with regard to the petitioners' Licence shall be concluded within three months. Put up this case again after three months, as prayer for by him.

Pending the final conclusion of the cancellation

proceedings, the operation of the impugned orders as contained in Annexures-2, 3 and 4 shall remain stayed.”

6. From the facts averred in the writ application, it appears that on the allegation of black-marketing of kerosene, First Information Report was lodged on 02/07/1987, giving rise to Gopalganj Police Station Case No. 156 of 1987 under Section 7 of the Essential Commodities Act, against the petitioner. Thereafter, by the order under challenge, dated 05/07/1987, issued by the District Magistrate, Gopalganj, the petitioner was asked to show cause as to why his licence should not be cancelled.

7. Pending final decision on cancellation of the licence, the petitioner's licence was suspended with immediate effect.

8. Now, almost 28 years have elapsed from the issuance of said show cause notice, dated 05/07/1987, the proceeding relating to cancellation of the petitioner's licence, despite this Court's observations, dated 22/07/1987, has been continued without any final decision by the competent authority,

9. In our opinion, therefore, no purpose would be served if the order, dated 05/07/1987, placing the petitioner's licence under suspension, is allowed to continue, more particularly, when we agree with the contention of Mr. Y.V. Giri, learned

Senior Counsel, that the effect of order of suspension of the licence, in terms of the provision embodied in Clause - 11 of the Unification Order, lost its force after lapse of 90 days by operation of the said provision.

10. Accordingly, the order issued under Memo No. 39, dated 05/07/1987, by the District Magistrate, Gopalganj (Annexure - 2 to this writ application), is quashed. This application is, accordingly, allowed.

(I. A. Ansari, ACJ.)

(Chakradhari Sharan Singh, J.)

Praveen-II/-

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