IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.449 of 2015

==

Shanker Dayal Singh, son of Late Ram Jatan Singh, President, Jhari Primary Agriculture Credit Society Limited at Jhari, P.S.- Amas, District- Gaya.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Registrar, Co-operative Societies, Bihar, Patna.
3. District Magistrate, Gaya.
4. District Supply Officer, Gaya.
5. Sub-Divisional Officer, Sherghati, District- Gaya.
6. Assistant Registrar, Co-operative Societies, Sherghati, Gaya.

.... Respondent/s

==

Appearance :

For the Petitioner/s : Mr. Jitendra Prasad Singh

For the Respondent/s : Mr. Din Bandhu Singh, GP-9

==

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 03-04-2015

Heard Mr. Jitendra Prasad Singh, learned counsel appearing on behalf of the petitioner and Mr. Din Bandhu Singh, learned Government Pleader No.9 for the State.

The petitioner is the Chairman of Jhari Primary Agriculture Credit Cooperative Society in the district of Gaya. The society has been granted a licence to run a fair price shop under the Public Distribution System (Control) Order, 2001 as enforced in the State of Bihar vide Fair Price Shop Order, 2007 (hereinafter referred to as 'the Control Order') bearing Licence No.47 of 2012. Vide resolution passed on 7.11.2014, the society decided that the shop would be operated by one Ashok Kumar and an application to that effect was submitted by the petitioner before the Licensing

Authority on 17.11.2014. For some time the food-grains were being allocated to the fair price shop run by the society but vide order bearing Memo No.581 dated 11.12.2014 as contained in Annexure-4, the customers attached to the fair price shop of the society were attached with another licensee, namely, Raj Kumar Rajak bearing Licence No.227 of 2007 and even the representation filed by the petitioner was rejected. The order nowhere indicates the reasons as to such detachment of the consumers from the fair price shop run by the society.

Perusal of the counter affidavit manifests that the petitioner was made a co-accused in a criminal case arising from Amas P.S. Case No.155 of 2013 registered for the offences punishable under sections 409 and 420/34 of the Indian Penal Code and section 7 of the Essential Commodities Act. It is on this ground that the representation of petitioner for restoration of his supply was rejected by the Licensing Authority –cum- Sub-Divisional Officer, Sherghati, district- Gaya vide order bearing Memo No.92 dated 12.3.2015 placed at Annexure-C to the counter affidavit.

The only issue which falls for consideration before this Court is that whether a mere institution of a criminal case against the Chairman of the Society would be sufficient for detachment of the consumers from the shop, the licence of which was granted to Society.

An objection has been raised by Mr. Din Bandhu Singh, learned counsel appearing for the State on the ground that the order is appealable but perusal of Clause-15 of 'the Control Order manifests that it is only in case of non-renewal or cancellation of licence that an appeal lies and not in the circumstances complained of.

I have heard learned counsel for the parties and I have perused the materials on record.

Clause 14 of the 'Control Order' provides that where a licensee is convicted by a court of law for contravention of any order made under section-3 of the Essential Commodities Act, 1955 that his licence would be liable to be cancelled. A bare reading of such provision it is eloquent that it is only upon conviction of a licensee that his licence can be cancelled. In fact in the present case even in such circumstances the licence cannot be cancelled for the licence stands in the name of the Society and not the petitioner who only happens to be the Chairman of the Society and one Ashok Kumar has been made the operational manager of the fair price shop. Thus even in case the petitioner is ultimately convicted in the criminal case yet it would have no impact on the licence which is issued in favour of the Society and in absence of any default by the Society the licence neither can be cancelled nor the supplies can be stopped or the consumers be detached.

The order of the Licensing Authority –cum- Sub-Divisional Officer is also not sustainable in view of the provisions underlying clause 7(vi) of 'the Control Order' which specifically provides that allocation to FPS dealers shall not be discontinued under any circumstance. The provision further clarifies that it is only in case of cancellation of licence that allocation to a FPS dealer would be tagged to the nearest FPS dealer.

In so far as the present case is concerned, there is no case registered against the Society who happens to be the licensee and even the criminal case instituted against the petitioner who happens to be the Chairman of the Society is pending consideration before the competent court of criminal jurisdiction. Meaning thereby the conviction is yet to be recorded. Clause 7(vi) further clarifies that allocation of a FPS dealer shall not be stopped in any circumstances rather it is only after cancellation that allocation can be tagged to any other FPS dealer.

For the reasons aforementioned the order impugned passed by the Licensing Authority –cum- Sub-divisional Officer, Sherghati, district- Gaya bearing Memo No.581 dated 11.12.2014 as contained in Annexure-4 together with the order bearing Memo No.92 dated 12.3.2015 of the same authority placed at Annexure-C cannot be upheld and are accordingly set aside.

The writ petition is allowed. The consumers attached to the Society who were detached vide order dated 11.12.2014 as contained in Annexure-4, stands restored to the fair price shop of the Society and the consequences including the allotment to the shop shall follow. .

(Jyoti Saran, J)

SKPathak/-

U			