

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6581 of 2015

- =====
1. Lal Babu Singh S/o Late Malgujar Singh Resident of Village & Panchayat Barwa, P.S. Harpur, Block Asapur, District East Champaran, Motihari.
 2. Ram Babu Singh @ Guddu Kumar Singh S/o Ram Siwil Singh Resident of Village Chikni, P.S. Harpur, Block Adapur, District East Champaran, Motihari.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Food & Civil Supply, Government of Bihar, Patna.
2. The Joint Secretary, Department of Food & Consumer Protection Department, Government of Bihar, Patna.
3. The District Magistrate, East Champaran, Motihari.
4. The District Supply Officer, East Champaran, Motihari.
5. The Sub Divisional Officer, Raxaul District East Champaran, Motihari.
6. The Senior Deputy Collector, Legal Section, East Champaran, Motihari.
7. The Marketing Officer, Adapur Block, District East Champaran, Motihari.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Rakesh Kumar, Advocate
For the Respondent/s : Mr. Sunil Kumar, AAG-6

=====

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL ORDER

2 09-12-2015

I have heard learned counsel for the petitioners
and the State.

Petitioners seek quashing of Annexure 8 which
is memo no. 29 dated 06.01.2015 and Annexure 9 dated
05.01.2015. Both are communications addressed to the petitioners
issued by the S.D.O. Raxaul by which he has stated that
suspension of their licence in the year 2004 cannot be revoked
and for that purpose, they would have to file appeal before the

competent Authority.

It is submitted on behalf of the petitioners that the order of suspension was passed vide Annexure 1 dated 31.12.2007. Though it is stated there that the shop is being suspended but it has to be understood that the licence granted to the petitioner for running P.D.S. shop has been suspended. It is further stated that Raxaul (Adapur) P.S. case no. 1/08 was registered against the petitioner's u/s 406/33 of the Indian Penal Code along with Sec. 7 of the E.C. Act. The petitioners did not challenge the order of suspension. However, after their acquittal from the criminal charges in the matter, they approached the Licensing Authority for revocation of their licence.

In my view, the decision contained in communication as per Annexures 8 and 9 are not sustainable in law. On the date of passing of order of suspension i.e. on 31.12.2007, the P.D.S (Control) Order, 2001 (hereinafter referred to as the control order) 2001 was already in force and the provisions of Bihar Trade Articles (Licence Unification) Order, 1984 were declared not applicable to the fair price shops. Therefore, it is to be understood that the order impugned as contained in Annexure 1 was passed under the provisions of Public Distribution System (Control) Order, 2001. The provision of

suspension of licence is there under clause 7 of the aforesaid control order which is quoted below for better appreciation :

“7. Suspension and Cancellation of the licence :-

(i) In the light of Hon’ble Supreme Court order in Civil Writ petition 196/2001, action will be taken against the licensee in following situation:-

Licensees, who

(a) do not keep 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) keep 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/cancel 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 recommend for revocation of suspension. The Licensing Authority shall act accordingly.”

XX XX XX XX XX

From the perusal of Clause 7 (II), it would appear that the Licensing Authority is empowered either to suspend or to cancel the licence by a written order. However, that order has to be passed only after a show-cause notice is issued by the licensing authority in terms of Clause 7 (IV). Clause 7(V) provides that the life of suspension of licence is maximum for a period of 90 days only. There is no mode provided for suspension of licence under Clause 7(III). Under the aforesaid provisions,



suspension would continue till the matter is pending before a court of law . However, it does not appear from perusal of Annexure 1 that the suspension was under Section 7(III) rather it appears that suspension was on the basis of some complaint of District Public Grievance Cell vide letter dated 11.12.2007. Thus, it can be construed that the said order of suspension was passed under Clause 7(II) and its period will be only for 90 days. That being so , the order of suspension as contained in Annexure 1 has become a nullity after its statutory life of 90 days and thus the P.D.S. Licence automatically became effective after passing of 90 days from the date of filing of Annexure 5. Though it also appears that the order has been passed without issuing any show-cause but that order is not required to be considered in the present case as no appeal was preferred by the petitioner against the said order. Alternatively, even if it is assumed that the order was passed under clause 7(iii) then the suspension has to continue till the case is pending before a court of law. In such situation also, the petitioner having been acquitted in the matter, now the suspension has to be revoked. However, it would also be pertinent to mention here that subsequently, by bringing amendment in the control order the provision of suspension under clause (ii)(iii) has now been deleted from the statute and there is no power left with the

licensing authority to suspend the licence although he can take steps in accordance with law to cancel the licence if the same is required. Annexure-F which is direction of Government of Bihar contained in letter no. 2492 dated 01.09.2004 would not be applicable in the present case as it has been issued in terms of the provisions contained in the Bihar Trade Articles (Licenses Unification) order 1984 which is not in operation for the relevant purposes after enforcement of the aforesaid control order.

The order impugned is quashed and the writ application is allowed.

Accordingly, the supplies to the petitioner's shop have to be resumed at once.

(Dr. Ravi Ranjan, J)

M.Rahman/-

U		T	
---	--	---	--