

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4069 of 2014

=====

Jaishankar Prasad Yadav, Son of Sri Siyaram Yadav, Resident of Village -
Rostama, P.S. Birpur, District - Begusarai

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Food and Civil Supplies, Govt. of Bihar, Patna
2. The District Magistrate, Begusarai
3. The Sub - Divisional Officer, Begusarai
4. The District Supply Officer, Begusarai
5. The Block Supply Officer, Birpur, Begusarai

.... Respondents

=====

Appearance :

For the Petitioner/s	:	Mr. N. K. Agrawal, Sr. Advocate
	:	Mr. D. N. Tewari, Advocate
	:	Mr. Pranav Kumar, Advocate
For the Respondent/s	:	Mr. Gautam Bose, AAG-8
	:	Mr. Ajay Kumar, AC to AAG-8
	:	Mr. Sanghmitra Ghosh, AC to AAG-8

=====

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL ORDER

4 24-11-2015 Heard Mr. N. K. Agrawal, learned senior counsel for

the petitioner and Mr. Gautam Bose, learned AAG-8 on behalf of

the respondents.

2. The petitioner is a PDS dealer. He seeks quashing
of the part of the order dated 23.07.2012 contained in Memo No.
291 issued under the signature of Sub-Divisional Officer,
Begusarai whereby allocation of food grains and Kerosene Oil
Etc. for shop has been discontinued and attached with another
PDS dealer in view of institution of an F.I.R. under section 7 of
the Essential Commodities Act.

3. He submits that after amendment dated 23.06.2011 in P.D.S. Order, 2001, allocation to a P.D.S. dealer cannot be discontinued except other than the ground of cancellation of license or conviction in a criminal case. He submits that prior to 23.06.2011 amendment, a PDS license could be suspended on institution of a criminal case or contravention of terms of agreement. If a license is suspended, allocation could be withheld under the law.

4. In the year, 2001, the Government of Bihar, Food, Supply and Commerce Department came out with P.D.S. (Control) Order, 2001. The said order became operational on 20.02.2007 in view of G.S.R. No.1 dated 20.02.2007 of Government of Bihar, Food, Supply and Commerce Department. Sub-Clause (ii) of Clause 7 of the said Order stated that if any licensee contravenes any provisions or any terms and conditions of the license, duties, responsibilities and order of State Government, then the licensing authority shall suspend/cancel the license by a written order. Sub-Clause (iii) of Clause 7 states that if an FIR is lodged for contravention of an order under Essential Commodities Act, 1955, the license shall be suspended till the matter is pending before the Court of law. Sub-Clause (vi) of Clause 7 states that allocation to F.D.S. dealers can be

discontinued only in case, a license has been suspended or cancelled, and the allocation of such FPS dealer be tagged to a nearest FPS dealer. As per Sub-Clause (vii) of Clause 7, the consumers too would be tagged to the nearest FPS shops by the respective Block Supply Officer/Incharge Supply Officer/Supply Inspector.

5. It would thus appear that 2001 Control Orders provided for suspension of license both on contraventions of terms of license under Clause 7 (ii) and institution of F.I.R. under Clause 7 (iii) Once a license is suspended, the allocation to the FPS shop could be discontinued by virtue of provision under Sub-Clause (vi) of Clause 7. However, the situation changed after amendment in 2001 Control Order on 23.06.2011.

6. Sub-Clause (ii) and (vi) of Clause 7 which empowered suspension were deleted vide 2011 amendments in 2001 Order. The provision of suspension now more existed. Sub-Clause (ii) to (vii) of Clause 7 are quoted herein below for easy reference:

7. (ii) If any license contravenes any provision or any terms and conditions of license or any of his duties and responsibilities or any order of State Government 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 license may be cancelled by the Licensing Authority by written order.

No order of cancellation shall be made under this clause unless the licensee has been given a reasonable opportunity stating its case against the proposed cancellation". The similar matter shall be disposed by the Licensing Authority within a month.

(iii) 2 [x x x]

(iv) 2 [x x x]

(v) 2 [x x x]

(vi) Allocation to FPS dealers shall not be discontinued under any circumstance. In case of 2 [x x x] cancellation of license allocation to a FPS dealer should be tagged to the nearest FPS dealer.

(vii) After [cancellation] 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."

7. Thus, 2001 Control Order as amended on 23.06.2011 does not bestow power on an authority to suspend a license on institution of an F.I.R. and as such the power to discontinue allocation on institution of an F.I.R. is now, not permissible. The allocation can be cancelled only in case of

cancellation of license.

8. In the result, the impugned order dated 23.07.2012 discontinuing the allocation to the petitioner's P.D.S. shop is set aside. In case, if there is violation of terms and conditions of license, it will be always for the respondent authorities to proceed afresh in accordance with law.

9. The writ application is allowed to the extent mentioned above.

(Samarendra Pratap Singh, J.)

Uday/-

U			
---	--	--	--