

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2626 of 2015

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1. Harendra Kumar Singh Son of Late Jagarnath Singh Resident of Village - Maguraha, P.O - Sonbarsa, P.S- Tariyani, District - Sheohar.
 2. Rajendra Prasad Singh Son of Late Harihar Singh Vill & P.O- Sakharpur, P.S- Tariyani, District - Sheohar.

.... Petitioners

Versus

1. The State of Bihar through the District Magistrate , District - Sheohar.
2. The Sub-Divisional Officer, District - Sheohar.

.... Respondents

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Appearance :

For the Petitioner : Mr. S.D. Sanjay, Sr. Advocate,
Mr. Alok Kumar Agrawal, Advocate
For the State : Mr. Kuber Pathak, A.C. to S.C. 14

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 09-12-2015

Heard learned counsel for the petitioners and the State.

Petitioners are aggrieved by Annexure 6 which is an order dated 27.08.2011 passed by the Sub-Divisional Officer-cum-Licensing Authority, Sheohar by which PDS licence of 23 persons including the petitioners have been suspended in view of Clause 7(ii) of the Public Distribution System (Control) Order, 2001.

Mr. S.D. Sanjay, learned Sr. Counsel appearing for the petitioners, raises a short question. It is urged that on the date when the order impugned was passed, the amendment brought in paragraph 7 by deletion of paragraph 7(ii) with a new provision, copy of which has been appended as Annexure 8, the provision of suspension of



licence was taken out from the statute. Even the provision of suspension under Clause 7(v) in view of the pendency of criminal case registered under the provisions of Essential Commodities Act, 1955, also stands deleted by the same amendment. It is, thus, contended that the Licensing Authority did not have any authority to suspend the licence. He could have proceeded for issuance of show cause notice and after considering the reply, could have even proceeded for cancellation of licence but power of suspending the licence was no more there with the Licensing Authority.

Learned counsel appearing for the State does not have any answer to it as the statute itself speaks that there is now no provision of suspension of licence. For better appreciation, the relevant provision as contained in Clause 7 before the amendment brought in the year 2011 and after the amendment are quoted as under:-

“7. Suspension and Cancellation of the Licence:-

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

(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 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) [x x x]

(iv) [x x x]

(v) [x x x]

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

(vii) After [cancellation] of licence 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."

7. Clause (ii) of Para-7 shall be substituted by the following:-

"(ii) If any licensee 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."

After perusal of the aforesaid provision, I find force in the submission raised on behalf of the petitioner and, in my view,

since no power of suspending a licence was available on the date of which the impugned order was passed as the amendment became effective from 23.06.2011 itself, the order impugned cannot be sustained in law and accordingly the same is quashed and set aside so far the petitioners are concerned. However, it is made clear that this would not divest the Licensing Authority from the powers to proceed afresh, if it so desires, against the petitioners.

However, till any further action is taken and further order is passed, since the order impugned has already been quashed and set aside, supplies to the petitioner should resume within one month depending upon the future action by the Licensing Authority.

Accordingly, this writ application stands allowed to the extent as indicate above.

(Dr. Ravi Ranjan, J)

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