

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.847 of 2015

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Yogendra Rai @ Yogendra Yadav S/o Deo Narayan Rai, resident of village-
Mahishi; P.S. - Bibhutipur; District- Samastipur

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Food and Civil Supply
Department Govt. of Bihar, Patna.
2. The Commissioner Darbhanga Division, Darbhanga.
3. The District Magistrate Samastipur, Dist. Samastipur.
4. The District Supply Officer, Samastipur Dist. Samastipur.
5. That Sub Divisional Officer, Roesera, District Samastipur

.... Respondent/s

Appearance:

For the Petitioner/s : Mr. Bijay Bhushan Prasad, Advocate

For the Respondent/s : Mr. Manish Kumar, GP-8

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 01-05-2015

Heard Mr. Bijay Bhushan Prasad for the petitioner and

Mr. Paras Mani, Assisting Counsel to G.P.-8 for the State.

Despite adjournments being granted to the counsel for the State on 19.3.2015 and again on 17.4.2015, the instructions are wanting and no counter affidavit has been filed. Learned counsel submits that he has not received instruction. In the circumstances the prayer for further adjournment is rejected. Vide order passed on 17.4.2015 while granting adjournment to the State counsel, this Court had made clear stipulation that no further adjournment would be granted and in case no counter affidavit is filed by the next date, the matter would be disposed of on the basis of materials on record by drawing adverse inference and accordingly the matter is being

considered and disposed of at the stage of admission itself on the basis of materials on record.

The petitioner is a licensee under the Public Distribution System (Control) Order, 2001 enforced in the State of Bihar vide Fair Price Shop Order, 2007 (hereinafter referred to as 'the Control Order') and is aggrieved by the order dated 08.10.2013 passed by the Collector, Samastipur in Case No. 22 of 2013 whereby the Collector as an appellate authority has confirmed the order dated 17.1.2012 of the licensing authority-cum-Sub-Divisional Officer, Rosera whereby the license of the petitioner bearing No. 353 of 2007 has been cancelled *inter alia* on grounds of his conviction in a criminal case arising from Sessions Case No. 200 of 1995 in Bibhutipur P.S. Case No. 61 of 1993 whereby the petitioner has been sentenced to life imprisonment.

Facts of the case briefly stated is that the petitioner is holder of license bearing No. 353 of 2007 under 'the Control Order'. The petitioner was involved in a criminal case arising from Bibhutipur P.S. Case No. 61 of 1993 registered under Section 307 of the Indian Penal Code and subsequently Section 302 was added to the allegations. Under the judgment and order dated 10.2.2011 passed by the trial court in Sessions Case No. 200 of 1995, the petitioner was convicted under Section 302 of the Indian Penal Code and sentenced to life imprisonment. Following the conviction, the license of the petitioner was put under suspension vide order dated 21.2.2011 of the



licensing authority-cum-Sub Divisional Officer, Rosera placed at Annexure-2 to the writ application. The petitioner being aggrieved by the judgment and order of conviction preferred Criminal Appeal No. 182 of 2011 before this Court and was granted bail by this Court. After obtaining bail the petitioner filed an application on 30.5.2011 before the licensing authority praying for restoration of his license and the matter was referred to the District Selection Committee who in turn required the Sub-Divisional Officer to take a final decision in the matter. The application of the petitioner and the proceedings of the District Selection Committee are placed at Annexures-3 and 5 to the writ petition. Upon reference by the District Selection Committee, the licensing authority-cum-Sub Divisional Officer, Rosera vide order bearing No. 41 dated 17.1.2012 cancelled the license of the petitioner on grounds of his conviction. The order of the licensing authority has been affirmed by the Collector as appellate authority vide order dated 8.10.2013 passed in Appeal No. 22 of 2013 placed at Annexure-8 and being aggrieved the petitioner is before this Court.

Mr. Bijay Bhushan Prasad, learned counsel for the petitioner has raised the following issues for consideration:

- (a) The license of the petitioner having already been subjected to a penalty of suspension vide order passed on 21.2.2011 (Annexure-2), he could not have been saddled with a penalty of cancellation in view of the law laid down by this Court in the case of Shiv Chandra Jha vs.

State reported in 2013(3) PLJR 956 as it amounts to double penalty;

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- (b) The order of cancellation dated 17.1.2012 passed by the licensing authority as affirmed by the appellate authority is in the teeth of the statutory provisions underlying Clause-7 (ii) of 'the Control Order' which casts an obligation on the licensing authority to give a reasonable opportunity of hearing to the licensing holder before a proposed cancellation which obligation has not been satisfied; and
- (c) The only provision under 'the Control Order' which enables the licensing authority to cancel a license on a conviction can be found in Clause-14 of 'the Control Order' and which also does not apply to the case of the petitioner inasmuch as he has not been convicted for violation of any 'order' issued under the Essential Commodities Act.

As I have observed hereinbefore despite time being granted there is no affidavit on behalf of the State. However, since the issues raised by the petitioner are issues of law hence this Court does not find necessity to await the formality of filing of a counter affidavit.

Mr. Paras Mani, Assisting Counsel to G.A.-8 for the State tried to justify the action of the respondents by relying upon the guidelines dated 9.4.2008 issued by the State Government which



enables the licensing authority to cancel license on a conviction of a license holder on any ground but in my opinion such argument is only taken to be rejected on grounds that despite an amendment having been effected in 'the Control Order' on 23.6.2011, no such provision was incorporated in 'the Control Order' rather even such of the provisions which enabled the licensing authority to suspend license of a license holder on an institution of a criminal case stood deleted. The situation as it stands at present is that the only provision in Clause-14 of 'the Control Order' which vests power in the licensing authority to cancel a license of a license holder can only be as resorted to in case of a conviction for contravening any 'order' issued under Section 3 of the Essential Commodities Act. The provision is self eloquent and there is a conscious omission by the law framers to keep a conviction under a general law outside the operation of disability. Thus where the statutory authorities under 'the Control Order' have not been vested with any jurisdiction to cancel a license of a license holder on grounds of conviction other than for contravening 'an order' issued under the Essential Commodities Act a conviction under a general law cannot be a measure for disqualification for cancellation of the license and on this ground alone, the orders impugned become unsustainable.

Insofar as the other issues raised by the petitioner is concerned, it is seen that even when the District Selection Committee has required the Sub-Divisional Officer-cum-Licensing Authority to

take a final decision on the issue, the order of cancellation has been passed by the licensing authority on 17.1.2012 without adherence to the statutory provisions of Clause-7(ii) of 'the Control Order', which mandates a show cause against proposed cancellation.

For the reasons aforementioned, the orders impugned at Annexure-6 and 8 to the writ petitioner whereby license of the petitioner has been cancelled, cannot be upheld and are accordingly set aside. Since the petitioner is already on bail and there is no other ground to deprive him from the privilege, his license shall stand restored and would be subject to the final outcome of the Criminal Appeal No. 182 of 2011 pending before this Court.

The writ petition is allowed.

(Jyoti Saran, J)

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