

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1420 of 2014

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Harihar Rai @ Harihar Raut Son Of Late Ganesh Rai Resident Of Village
Khursaha, Panchayat- Lahuriya, P.S. Bela, District Sitamarhi

.... Petitioner

Versus

1. The State Of Bihar Through The Secretary Food And Civil Supply
2. Sub Divisional Officer, Sitamarhi Sadar
3. Anchal Adhikari-Cum-Block Supply Officer, Parihar, District Sitamarhi

.... Respondents

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Appearance :

For the Petitioner : Mr. Yogendra Mishra, and
Mr. Binod Kumar, Advocates
For the State : Mr. Prabhat Kumar, AC to GA 2

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 10-05-2016

Heard the parties.

Petitioner claims that his licence was suspended vide order dated 20.03.2000 itself for committing alleged irregularities. Thereafter, First Information Report was also lodged and the suspension continued. Eventually, vide Annexure 5, the judgment of acquittal was passed in favour of the petitioner acquitting him from the criminal charges. The petitioner claims that he had approached the authorities but no action was taken by them thereafter. However, on record there is a representation of the petitioner dated 30.09.2013 addressed to the licensing authority, Sitamarhi, contained in Annexure 7, which was made after a delay of 10 years but even then no decision appears to have been taken on the issue of delay.



Learned counsel for the petitioner submits that since no third party right has been created and the suspension cannot continue till eternity. His legal right has been inflicted even after the court of competent jurisdiction has recorded finding that he has not been found guilty and, thus, he has been acquitted of the criminal charge.

Learned counsel for the petitioner places reliance upon a decision of the Apex Court in **Tukaram Kana Joshi and others through Power Holder of Attorney v. M.I.D.C. and others(AIR 2013 Supreme Court 565)** to show that even after 30 years of delay the writ petition was maintained.

However, in my view, such delay cannot be ignored if any third party right was also created meaning thereby his licence was cancelled and, thereafter, the licence for the concerned PDS shop has been granted to somebody else and the petitioner did not challenge the aforesaid act. Moreover, in case third party right has not been created, the same would mean that the petitioner's licence is still under suspension.

In such a situation, several legal questions would arise as to whether the suspension order as contained in Annexure 2 which has been passed under the provisions of Clause 11 of the Bihar Trade Articles(Licence Unification) Order, 1984(hereinafter to be referred to as "Unification Order") was by way of punishment under Clause

11(1) of the Unification Order or the suspension was in contemplation of a proceeding for cancellation of the licence as provided under Clause 11(2) of the Unification Order.

It is by now settled that if the order of suspension of the licence is taken under Clause 11(1) of the Unification Order by way of imposition of punishment then in such a case a show-cause notice must be issued and, thereafter, upon consideration of the reply filed by the licensee to the show-cause notice would be required before taking a final decision. However, if such suspension is in a proceeding in contemplation of a proceeding for cancellation of the licence then there would not be any requirement of issuance of notice for suspension of the licence but that suspension would continue merely for 90 days and not thereafter. Another question would be that even if it is assumed that the order of suspension has been passed by way of punishment under Clause 11(1) of the Unification Order then what would be the period of suspension of the licence? If it has to last for ever then why the licence should not be cancelled so that fresh licence could be issued to another person? Whether such suspension should continue even after the judgment of acquittal passed in the criminal case, that would be another question to be answered.

However, there are no materials to deal with such matters as

no decision appears to have been taken by the authority concerned in this regard.

Accordingly, this writ application is being disposed of with a liberty to the petitioner to once again approach the licensing authority for revocation of the order of suspension. On such representation having been filed along with a copy of this order, let the licensing authority take a decision on the same on its own merit and in accordance with law and also taking into account the observation and questions which have been discussed hereinabove and also answering them within a period of four months from the date of filing of such representation along with a copy of this order. It would also proceed to ascertain as to whether the order of cancellation has been passed subsequently and whether any third party right has been created or not. If a third party right has already been created or if it is not created, in both the cases, proper order would be required to be passed.

(Dr. Ravi Ranjan, J)

SC/-

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