

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11081 of 2016

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Tilak Deo Rai, son of Late Faguni Rai, resident of village-Pareyan, P.S.-Kurhani,
District-Muzaffarpur.

.... Petitioner

Versus

1. The State of Bihar.
2. The District Magistrate, Muzaffarpur.
3. The Sub-Divisional Magistrate, West, Muzaffarpur.
4. The Block Supply Officer, Kudhari.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shankar Kishore Shahi, Advocate
For the Respondent/s : Mr. Nasrul Huda Khan, SC-1
Mrs. Babita Kumari, AC to SC-1

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 15-12-2016

Heard parties.

The petitioner assails Annexure-1, which is an order dated 29.06.2015 passed by the Sub-Divisional Officer-cum-Licensing Authority, West, Muzaffarpur in File No.06/15 holding that unless the petitioner is exonerated in the concerned criminal case, allotments cannot be resumed in view of the provisions contained in Bihar Public Distribution System (Control) Order, 2001 (hereinafter referred to as 'the Control Order').

The petitioner's licence was earlier suspended and cancelled on the self same ground which was assailed in CWJC No.13142 of 2010. The aforesaid writ petition was disposed of vide Annexure-9 dated 08.02.2012. Both the orders of suspension and



cancellation of licence were set aside, however, the respondents were given liberty to initiate a fresh proceeding, if they so desire. Thereafter, the Collector vide order dated 5.10.2012 (Annexure-13), after quoting the order of this Court, had observed that the appeal cannot proceed, however, he directed the Sub Divisional Officer to seek a fresh show cause from the petitioner and proceed further. In my considered view, he was not required to do so. He made grave error while doing so as it was only the licensing authority who was required to apply his mind as to whether fresh proceeding should be drawn or not.

However, even after such direction given by the Collector, it appears that no action was taken by the Sub Divisional Officer but, at the same time, allotments to the petitioner were not resumed in gross violation of the directions of this Court as neither the order of cancellation nor the order of suspension survived after the order as contained in Annexure-9.

It appears that the petitioner filed a representation before the Sub Divisional Officer but, when nothing happened, the petitioner again moved before this Court vide CWJC No.242 of 2014 (Annexure-17) which was disposed of on 10.03.2015 directing the Sub Divisional Officer-cum-Licensing Authority to consider the request of the petitioner and dispose of the representation dated



13.02.2012.

On such direction, the impugned order, as contained in Annexure-1, has been passed saying that allotments cannot be resumed in favour of the petitioner.

In my considered view, the order impugned, apart from suffering from the vice of illegality, prima facie appears to be contumacious in nature. Vide Annexure-9, this Court had quashed the order of suspension as well as the order of cancellation, however, liberty was given to initiate a fresh proceeding if the licensing authority so desires. No fresh proceeding was initiated. It means that the licensing authority was not desirous to initiate a fresh proceeding as, even if there was such direction by the Collector, eventually nothing was done. Now simple meaning of quashing of the order of suspension and cancellation would be that allotments would have to be immediately resumed but the licensing authority has come to the conclusion that in view of certain provisions contained in the Control Order, since the FIR has been registered against the licensee under the provisions of Essential Commodities Act, his allotments should remain suspended.

Learned counsel for the State has miserably failed in pointing out such provision from the Control Order.

Contrary to that, there is specific provision under Clause



7 (vi) that such allotments cannot be discontinued. The relevant provisions contained in Control Order are extracted as under for better appreciation.

7 (vi) Allocation to FPS dealers shall not be discontinued under any circumstance. In case of suspension or cancellation of licence allocation to a FPS dealer should be aged to the nearest FPS dealer.

(vii) After suspension 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.

From the conjoint reading of the aforesaid provisions, it would be apparent that allocation to the dealer cannot be discontinued in any circumstance save and except cancellation of licence which is absent in the present case as the order of cancellation has already been set aside and there is no further order of cancellation of licence. That apart, there is no provision even of cancellation or suspension of licence on the ground of registration of a criminal case against the petitioner under the provisions of the Essential Commodities Act rather provision contained in Clause 14 of the Control Order lays down that as a consequence of conviction of the licensee in such case, the licensing authority shall, by order in writing, cancel his licence.



Even in such case also, first the order of cancellation would have to be drawn and then the allotments would be stopped and same would be tagged with some other dealer. The petitioner contends that he is already on bail and, though the case was lodged in the year 2008, still even charge sheet has not been submitted. Such assertion made by the petitioner in paragraph 28 of the writ petition has been denied in a very vague manner by only stating that the statements made in paragraphs 28 and 29 are incorrect. However, when learned counsel appearing for the State was questioned as to on which date charge sheet against the petitioner was submitted, he was unable to say anything regarding that. The respondents' action of making a vague reply in such a serious matter is deprecated.

This Court in ***Umesh Ram Vs. The State of Bihar and Ors. (AIR 2014 PATNA 113)*** has already held that cancellation on the ground of registration of criminal case against the licensee under Section 7 of the Essential Commodities Act would not be lawful.

Accordingly, in view of the aforesaid discussions, observations and findings recorded by this Court, the impugned order, as contained in Annexure-1, is not found sustainable in law at all. As a result, the same is quashed and set aside.

If the petitioner is on bail then there would be no hindrance in running his PDS shop, therefore, allotments should be



resumed immediately.

However, as the law contemplates, his licence or allotments would be depend upon final result of the concerned criminal case.

As a result, this application stands allowed.

(Dr. Ravi Ranjan, J)

V.K. Pandey/-

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