

CWP No.14239 of 2016

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.14239 of 2016
Date of decision:17.08.2016**

Sanjeev Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Ms. Loveleen Dhaliwal, Advocate,
for the petitioner.

Ms. Gaganpreet Kaur, AAG, Haryana.

Rakesh Kumar Jain, J.

The petitioner was holding license No.JND/PDS/574 dated 01.08.2013, issued under the Haryana Public Distribution System (Licensing and Control) Order, 2009 (hereinafter referred to as the "Order") by the Food and Supply Department, for running a Fair Price Shop at Ward No.3, Safidon, District Jind. He is aggrieved against the order dated 11.07.2016 passed by the District Food and Supply Inspector, Jind, by which he has been barred from running the Fair Price Shop till further orders.

One FIR No.0311 dated 11.07.2016, under Section 3 of the Essential Commodities Act, 1955, at Police Station Safidon, District Jind was also registered against the petitioner.

Counsel for the petitioner has argued that as per Clause 13(1)

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of the Order, the Fair Price Shop can be suspended immediately but in the case of the petitioner, action has been taken after more than one year and before registration of criminal case, opportunity of hearing is required which has not been granted. It is submitted that insofar as the FIR is concerned, that has been challenged by way of CRM No.M-25350 of 2016 in which notice has been issued for 02.09.2016 with an order that coercive action may not be taken against the petitioner but the petitioner is aggrieved against the order dated 11.07.2016 by which supply to his Fair Price Shop has been suspended.

After notice, the respondents have filed the reply, in which it is averred that the suspension order can be passed without notice as provided under Clause 13(4) of the Order and that the petitioner has an alternative remedy of appeal provided under Clause 16 of the said order.

I have heard learned counsel for the parties and perused the available record.

Since the respondents have questioned the maintainability of the writ petition on the ground of availability of statutory remedy of appeal under the Order, therefore, it would be appropriate to decide the said question at the first instance. In order to appreciate contention of learned counsel for the respondents, it would be relevant to refer to Clause 16 of the Order pertaining to appeal, which reads as under:-

“16. All appeals against the any order of licensing authority under this order shall lie before the Deputy Commissioner/ Collector of the concerned Districts. Such appeals shall have to be filed within a period of thirty days of the date of order of the licensing authority.”

Since the impugned order has been passed by the District Food and Supply Inspector, therefore, it is appealable before the Deputy Commissioner in terms of Clause 16 of the Order, which though has to be filed within 30 days of the date of order. Since the impugned order has been passed on 11.07.2016, 30 days would expire on 11.08.2016 and, thus, the period of filing the appeal by the petitioner, is still available.

Insofar as the prayer regarding notice in case of suspension is concerned, Clause 13.4 of the Order, 2009 is relevant, which is reproduced as under:-

- | | | | | |
|---------|---|-----|-----|-----|
| “13 (1) | xxx | xxx | xxx | xxx |
| (2) | xxx | xxx | xxx | xxx |
| (3) | xxx | xxx | xxx | xxx |
| (4) | The licensing authority may by a written order, suspend the license of a Fair Price Shop Owner, if a proceeding under sub-clause (1) of this clause has been initiated against the Fair Price Shop Owner, and the said licensing authority is satisfied that it is not in the interest of the smooth operation of the Public Distribution System to allow the dealer or the Fair Price Shop Owner to handle the Public Distribution System stocks. No prior notice shall be necessary before passing any order under this sub-clause. | | | |

Explanation.- For the purpose of this sub-clause, the proceedings under sub-clause (1) shall be deemed to have been initiated on the date of issue of the show-cause notice by the licensing authority.”

Since I am not deciding the issues raised by the petitioner or the respondents on merits and the petitioner is being relegated to the statutory remedy of appeal under Clause 16 of the Order, therefore, no opinion is being expressed on merits on the other issues involved in this case. The writ petition is just disposed of on the ground of availability of effective and

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efficacious statutory remedy, as provided under Clause 16 of the Order, and hence, the petitioner is relegated to avail that remedy, if so advised. Since the petitioner has spent sometime in this Court, therefore, he is granted another 7 days to file the appeal besides the 30 days available to him and in case such an appeal is filed within the period provided by this Court, the question of limitation shall not be raised by the other side.

With these observations, the present writ petition is hereby disposed of.

August 17, 2016
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No