

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

CWP No. 7069 of 2013

Date of decision: 1.04.2016

Gautam Parshad

.....Petitioner

versus

State of Haryana and others

.....Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Amit Jhanji, Advocate
 for the petitioner.

Mr. P.P.Chahar, DAG, Haryana.

Rakesh Kumar Jain, J.(Oral)

The petitioner has challenged the order dated 17.10.2015 (Annexure P-3) passed by respondent No. 3 by which license issued to the petitioner under the Haryana Public Distribution System(Licensing and Control) Order, 2009 (for short, 'the Order') has been cancelled and a direction has been issued for registration of FIR, against him and also order dated 26.02.2013 (Annexure P-6) passed by respondent No. 2 who has dismissed the appeal of the petitioner filed against the order dated 17.10.2012.

In short, the case set up by the petitioner is that he has been issued a license in the year 1988 under the Public Distriction System, PKL 66. He has been running the Ratio Depot

from a shop near Gurudwara in Village Kundi Panchkula since then. The petitioner was also elected as a Municipal Councilor from Ward No. 27 in the year 2008. One Kamaljit Singh son of Hari Chand, resident of House No. 4-A, Sector 20, Panchkula made a complaint to the Public Relation and Grievance Redressal Committee, Panchkula against the petitioner which was handed over to Sub-Divisional Officer, Civil Panchkula. In the said inquiry, as many as six short comings were found on the basis of which District Food and Supplies Controller, Panchkula issued a show cause notice on 10.10.2012 for the alleged violation of the provisions of Section 9(viii), 9(vii) and 10(i)(d)(e) of the Order.

The petitioner submitted his reply to the show cause notice. Thereafter, District Food and Supplies Controller, Panchkula passed the Order on 17.10.2012 by which the security deposited by the petitioner in lieu of PDS License No. 66 was ordered to be forfeited, his license was cancelled and an order was passed to register a criminal case against him.

Aggrieved against the said order, the petitioner preferred a writ petition bearing CWP No. 21637 of 2012 which was disposed of by this Court on 1.11.2012 on the ground that the petitioner has a remedy of appeal before the Deputy Commissioner, Panchkula.

Accordingly, the petitioner filed an appeal against the Order dated 17.10.2012 before the Appellate authority. The said appeal was also dismissed vide order dated 26.02.2013 without advertng to the issues raised by the petitioner that the criminal proceedings cannot be initiated by registration of FIR without

providing specific opportunity of hearing.

Hence, the present petition is filed.

Counsel for the petitioner has submitted that the action has been taken against him in terms of Section 13 of the said order which reads as under:-

“13. (1) No holder of a license issued under this order shall contravene any of the terms or conditions of the license or of any control order issued under the Act. If he contravenes any of the said terms or conditions, without prejudice to any other action that may be taken against him, the supply shall be suspended immediately without giving any notice. If the licensing authority is satisfied that the licensee has contravened any of the conditions of the license or is not performing his/her responsibility and duties properly, the licensing authority shall take one or more actions against the licensee as mentioned below:-

- i) forfeiture of the security deposit in full;*
- ii) cancellation of the license and forfeiture of the security deposit in full ;*
- iii) registration of criminal case as per provisions of the Act.*

Provided that no order with regard to above mentioned penal action shall be made under this clause unless the licensee has been given a reasonable opportunity of being heard.

(2) The licensee shall, if the amount of security at any time falls short of the amount specified in sub clause (1) of clause 7,

forthwith deposit further security to make up the amount on being required by the licensing authority to do so.

(3) Upon compliance with all obligations under the license by the licensee, the amount of security deposit or such part thereof, which is not forfeited as aforesaid, shall be refunded to the licensee after termination of the license by the licensing authority.

(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."

He has laid emphasis on Section 13 (1) (iii) where in it is provided that in case of Registration of a criminal case as per the provisions of the Act, reasonable opportunity of being heard has to be provided before any penal action is proposed by an Order.

Counsel for the respondent, however, submits that the

show cause notice was given under Section 13 of the Order in which three actions are stipulated, namely, forfeiture of security deposited in full, cancellation of license and forfeiture of security deposited and registration of criminal case. It is thus, argued that the petitioner has been given the opportunity of hearing in regard to the registration of criminal case as well.

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

There is no doubt that show cause notice was given under Section 13 of the Order but the proviso added to Section 13 (1)(iii) of the Order shows that before taking action under Section 13(1)(iii), another opportunity has to be granted to that person against whom a criminal action is supposed to be initiated as to whether he is liable criminally or not.

In view of the aforesaid interpretation of Section 13 (1) (iii) of the Order, I am of the considered opinion that there is an error on the part of the respondents in passing the Order in so far as registration of the FIR against the petitioner is concerned.

The writ petition is thus, hereby disposed of remanding the matter to the District Food & Supplies, Controller Panchkula to afford an opportunity of hearing as well for the purpose of registration of criminal case against the petitioner as ordered by him.

Parties are directed to appear before the District Food & Supplies, Controller Panchkula on 2.05.2016. The said authority is further directed to decide the issue as early as possible but not later than one month. It is needless to mention that he would pass

the order without being influenced with the earlier order passed by him.

1st April, 2016

Shivani Kaushik

**[Rakesh Kumar Jain]
Judge**