

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.506 of 2017

=====

1. Jairam Paswan S/o Hairlal Paswan resident of Village - Boknari, P.S. - Paraiya,
District - Gaya.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Food and Consumer Protection Department, Bihar, Patna.
2. The District Magistrate, Gaya.
3. The Sub Divisional Officer-cum-Licensing Authority, Tekari, Gaya.
4. The District Supply Officer, Gaya.
5. The Block Supply Officer, Tekari, Gaya.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Sudhir Kumar Sinha
For the State : Mr. Sanjay Kumar Giri, GP9
Mr. Nikhil Kumar Agrawal, AC to GP-9

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 08-03-2017

Heard learned counsel for the petitioner and learned
counsel for the State.

In the present writ petition, grievance has been raised by
the petitioner that in a wrong manner Licensing Authority has
cancelled the licence bearing Licence No. 1 of 1999 vide Memo
No. 228 Tikari dated 9.4.2016 on the ground that a criminal case
has been logged against him.

Brief fact of the case is that petitioner is a Public
Distribution System dealer vide shop licence no.1 of 1999. The
police on the request made by the Circle Officer-cum-Block



Supply Officer, Paraiya vide letter no.6115 dated 5.4.2016 instituted a case against the petitioner making an allegation that 450 Kg. of rice containing 50 Kg. each in nine bags has been recovered from a Tempoo bearing registration no.BR-02-M-8635. The said Tempoo was intercepted and it was found that said grain was sold by the petitioner which violates Section 7 of the Essential Commodities Act. The Sub Divisional Officer, Tikari, Licensing Authority has passed the order vide memo no.228 dated 9.4.2016 by which he has cancelled the licence of the petitioner mentioning therein that a criminal case has been lodged against him which is pending for consideration and as such for this misdemeanor in exercise of power conferred under Sections 4, 5 and 6 of the Government of Bihar, Food, Supply & Commerce Department, Public Distribution System (Control) Order, 2001 (hereinafter referred to as Control Order, 2001) which has been amended by Public Distribution System (Control) Amendment Order, 2011 (hereinafter referred to as Order, 2011) cancelled the licence.

In the present case only grievance has been raised that mere lodging of criminal case against the petitioner cannot deprive him out of being Public Distribution System licence holder licence, licence can be cancelled only after conviction in



criminal case.

Learned counsel for the State has tried to justify the order of the Licensing Authority and submitted that so long he is facing criminal case rightly his licence has been cancelled.

Present case is governed under the Bihar, Food, Supply & Commerce Department, Public Distribution System (Control) Order, 2001 Clause 7 of Order, 2001, under what circumstances action would be taken against the licensee in the condition situation mentioned therein. Clause 7(ii) provides that if any licensee contravenes the provision, terms of the licence, duties responsibilities and order of State Government then the Licensing Authority shall suspend/cancel the licence by a written order. The Control Order, 2001 has been amended by Order, 2011. By this amendment the words “suspension” has deleted Now after deletion it provides that in the event if any licensee contravenes any provision or any terms and conditions of license or any of his duties and responsibilities or any order of State Government then without prejudice to any other action that may be taken against him under the Essential Commodities Act, 1955 his license may be cancelled by the Licensing Authority by written order.. Clause 7(iii) of Order, 2001 provides that if FIR is lodged against PDS dealers for contravention of an order issued under Essential



Commodities Act, 1955 their licence shall be suspended till the matter is pending before the Court of Law but clause (v) provides that suspension of licence shall be for a maximum period of ninety days. Clause 14 provides consequences of conviction in criminal case which stipulates where a licensee has been convicted by a court of law for the contravention of any order made under Section 3 of the Essential Commodities Act the licensing Authority shall by order in writing would cancel his licence but in the present case action has not been taken either under clause 7(ii) or 14. Merely by lodging a criminal case ipso facto cannot be a ground for cancellation of licence but instead of waited for the outcome of the criminal case but straightway, the license of the petitioner has been cancelled, is not sustainable in law.

In such circumstances, this Court has no other way-out but to quash the impugned order. Accordingly the order dated 9.4.2016 is set aside and this writ petition is allowed.

Vinay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.3.2017
Transmission Date	NA

(Shivaji Pandey, J)

