

Civil Writ Jurisdiction Case No.2724 of 2014

Ram Dayal Mahto Son Of Late Ramdeo Mahto Resident Of Village -
Enayatpur, Police Station - Patori, District - Samastipur

... .. Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary, Department Of Food And Consumer Protection, Government Of Bihar, Patna
2. The District Magistrate, Samastipur
3. The Sub Divisional Officer, Patori
4. The Block Supply Officer, Patori, District - Samastipur

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Anand Kumar Ojha, Adv.
Mr. Ashok Kumar Karan, Adv.
For the Respondent/s : Mr. Y.P. Sinha, AAG -7
Mr. Shankar Kumar, AC to AAG -7

CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

5 31-08-
2017

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

The petitioner herein seeks a writ of certiorari for quashing the order dated 08.10.2013 in Appeal No. 96 of 2012 passed by the District Magistrate-cum-Collector, Samastipur by which the suspension of the petitioner's PDS licence has been upheld and by virtue of interlocutory application bearing I.A. NO. 5601 of 2017, petitioner also seeks to set aside the Memo No. 906 dated 03.05.2008, by which the petitioner's licence has been suspended.

Learned counsel for the petitioner submits that the petitioner is a licensee of the Public Distribution System, who



has been conducting a business of P.D.S. dealership to the satisfaction of all the concerned. However, first information report bearing Patori P.S. Case No. 12 of 2004 was lodged against the petitioner and one Ram Karan Ray. The petitioner was taken into custody and subsequently, released on bail. However, the petitioner continued to run his business despite being an accused in the said case. On 11.03.2008, the Block Supply Officer of Patori sent a report regarding the first information report of Patori P.S. Case NO. 12 of 2004 to the Licensing Authority and in view of the fact that the petitioner was facing criminal prosecution, the licensing Authority being the S.D.O., Samastipur has suspended the licence of the petitioner vide his order dated 03.05.2008, which has now come to be the subject matter of the present case.

The petitioner came to this Court challenging the aforesaid order of suspension vide order dated 01.11.2012 passed in C.W.J.C. No. 7458 of 2012, the matter was relegated to the Appellate Authority being the Collector under the Act. The petitioner then preferred an appeal bearing Appeal No. 96 of 2012 but the Collector while applying the Control Order notified on 15.02.2007 has proceeded to uphold the order of suspension passed by the Sub Divisional Officer and rejected



the Appeal as being in consonance with Clause 7(3) of the said Control order.

Aggrieved by the aforesaid order of rejection dated 08.10.2013, the petitioner now seeks interference by this Court on the pure proposition of law that the Public Distribution System (control) Order, 2001 notified on 20th of February, 2007 would not be applicable in the case of the petitioner in view of the express provision contained in the clause which is quoted below:-

***“Now therefore, the provisions of
“Bihar Trade Article (Licences
Unification) order 1984, will not be
applicable to fair price shops under the
Public Distribution System.”***

Learned counsel for the petitioner submits that the proposition of law as spelt out by the learned Collector to dismiss his appeal is wholly erroneous and cannot be sustained as in the Unification Order of 1984, there was no provision for suspension of the licence of the petitioner and since first information report was instituted in the year, 2004, the new rule as framed under the control orders which was duly notified on 2007 could not be applicable retrospectively. It is his further contention that such a proposition of law has been settled by several judicial pronouncements of this court which range back



to the *AIR 1990 Pat 90 equivalent to 1990 (38) BLJR 368 in the case of Swami Distributors Vs. State of Bihar & Ors decided on 28th of July, 1989*. At paragraph 12 of the said judgment, it was held that no such power has been conferred under Clause 11 of the Unification Order, 1984, and therefore, the authorities have no jurisdiction to pass an order of suspension of the licence because of the pendency of the criminal case.

In the instant case also admittedly, no provision exists so as to attract the provision of Clause 7 (3) as the first information report was instituted in the year 2004. In the absence of provision of suspension in the Control Orders of 1984, wherein though, there was provision for suspension and cancellation for violation of the provisions of the control order, there existed no specific provision for suspension or cancellation if a first information report was lodged against the licensee. It is, thus, clear from the provisions of the earlier Orders when the first information report was lodged, that the petitioner could not have been suspended save and except on violation of the terms of the licence as issued to him under the Control Orders as extant under that date. It was, thus, argued that the order of suspension dated 03.05.2008 and the appellate



order are without jurisdiction and stand vitiated.

Learned counsel for the petitioner further submits that all the statutes are prospective in nature in governing the rights and liabilities of the parties. Any liability conferred under the amended statutes would not affect the cause having arisen prior to the statutes coming into force. Retrospective application can be made only as and when specifically provided in the statute and not otherwise.

It was further contended by learned counsel for the petitioner that not only is the appellate order bad in law as having failed to appreciate the correct proposition as was contained in the control orders of the order 2007 which expressly repealed the Unification Order, 1984, the order passed by the SDO (Licensing Authority) is wholly misconceived and fit to be set aside as it seems to apply an order which was not in existence on the date of lodging of the first information report. Under such facts and circumstances, the writ application warrants interference by this Court under Article 226 of the Constitution of India.

A counter affidavit has been filed on behalf of the State of Bihar in which they have categorically averred that the petitioner's licence has been suspended and is liable for



restoration is wholly misconceived inasmuch as the said order dated 03.05.2008 was passed under the provisions of the Control Order and notification dated 15.02.2007 which is wholly applicable in the case of the petitioner. Accordingly, the Collector vide his final order dated 08.10.2013 has applied the said notification in passing the order which is impugned in the writ application. According to the State-respondents, law does not allow the Public Distribution system to have a licence if he is arrested and he cannot be permitted to continue with his licence.

Having heard learned counsel for the petitioner, the State and upon considering all facts and circumstances, it appears that the impugned order has in fact been issued in purported exercise of the power vested in the authorities under the PDS (Control) Order 2001 as notified on 15.02.2007. The said order conclusively repealed the control order of 1984. The Control order of 2001 dated 15.02.2007 has been notified prospectively and it is the settled principle that unless specifically provided any statute would not operate retrospectively. Hence the provision of Clause 7 (3) which has been sought to be invoked in the present writ application, suspending the licence of the petitioner could not have been



applied retrospectively, as the first information report was admittedly lodged in the year, 2004 when the said Control orders were not in force. The cause of suspension arose on 10.02.2004, on which date, the Control order, 2001 was not notified and the control order, 1984 was in force which did not provide for suspension or cancellation on the basis of the first information report instituted against the licensee. The aforesaid provision of law has been decided in the case of *Videocon International Ltd. Vs. Securities and Exchange Board of India reported in 2015(4) SCC 33* wherein the Apex Court has clearly enunciated the following principles for application of interpretation of any new statute.

“26. In *Hitendra Vishnu Thakur v. State of Maharashtra* MANU/SC/0526/1994: 4 SCC 602, this Court laid down the ambit and scope of an amending act and its retrospective as follows:

[i] A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such as construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

[ii] Law relating to forum and limitation is procedural in nature, whereas law relating to right of



action and right of appeal even though remedial is substantive in nature.

[iii] Every litigant has a vested right in substantive law but no such right exists in procedural law.

[iv] a procedural stature should not generally speaking be applied retrospective where the result would be to create new disabilities or obligations or to impost new duties in respect of transactions already accomplished.

[v] a statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation unless otherwise provided, either expressly or by necessary implication.”

Furthermore in the case of **Swami Distributorship Vs. State of Bihar & Ors** it was held that under the Control order 1984, no power was conferred under Clause 11 to suspend the license of the petitioner on the ground of criminal case. Paragraph -12 of the judgement is as follows:-

“In the instant case, admittedly no cancellation proceeding for the licence of the petitioner has been taken or ever contemplated. Therefore, there could be no question of interim suspension. Even if it was contemplated the suspension period has long lapsed. The contention of the learned Additional Advocate General that the order of suspension should be read as an order passed under Clause 11(1) of the Unification Order, 1984, is not acceptable to me because no authority has concluded that the petitioner has contravened any of the terms and



conditions of the licence. The impugned order of suspension contained in Annexure-4 also does not say so. It only says that in view of the pendency of a criminal case under Section 7 of the Essential Commodities Act, the licence of the petitioner has been suspended till further orders. This, to my mind, is in the nature of interim suspension till the conclusion of the criminal case. No such power has been conferred under Clause 11 of the Unification Order, 1984. In this connection may unhesitatingly refer to the decision in Govind Saran and Sons v. State of Bihar reported in MANU/BH/0028/1983 Pat LJR 26 : AIR 1983 Pat 96) and Onkarmal Satyanarain MANU/BH/0163/1976 (pat) (supra) where it was held that in absence of such a power being conferred by the statute, the authorities have no jurisdiction to pass an order of suspension of the licence because of the pendency of a criminal case. The said judgments are still relevant in spite of Clause 11 of the Unification Order, 1984, inasmuch as there is no power of suspension provided in the Unification order, 1984 during the period of pendency of a criminal case under Section 7 of the Essential Commodities Act. The initiation of a proceeding under Section 7 of the Essential Commodities Act does not amount to “construction of the terms and conditions of the licence”, for which alone an order of suspension of cancellation can be ordered. The question of contravention is at best sub judice”



In the result and the considered opinion of this Court and in the light of the settled principles of law which have been decided with respect to the facts and circumstances of the present case, the writ application warrants interference and the order dated 08.10.2013 and the Memo No. 906 dated 03.05.2008 as contained in Annexures 5 and I/1 are held to be bad. Accordingly, the same is set aside.

The writ application stands allowed with a direction to the respondents to restore the license of the petitioner with immediate effect and also take further steps for restoring the supply to the PDS dealership of the petitioner within a period of one month of receipt/production of a copy of this order.

However, in the facts and circumstances of the case, there shall be no order as to costs.

(Anjana Mishra, J)

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