

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2050 of 2017

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Chandrakala Devi W/o Late Janardan Paswan, Resident of Village- Afgalpur,
Panchayat- Ithari, P.S.- Salkhua, District- Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Saharsa.
3. The District Supply Officer, Saharsa.
4. The Sub Divisional Officer, Simri Bakhtiyarpur, Saharsa.
5. The Block Supply Officer, Banma Ithari, District- Saharsa.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. N.K. Agrawal, Sr. Advocate Mr.Dhananjaya Nath Tiwari Ms. Preety Kunwar
For the Respondent/s	:	Mr.S.Raza Ahmad,AAG-5

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date: 06.12.2018

The present writ petition has been filed for setting aside the order dated 09.03.2010 passed by the District Supply Officer, Saharsa, whereby and where under the license of the petitioner has been cancelled, which was suspended on 04.06.2019 by the Sub-Divisional Officer, Simri Bakhtiyarpur, Saharsa.

The brief facts of the case are that on 21.05.2009 a verbal complaint was made regarding irregular supply of food grains and kerosene oil, whereafter on 22.05.2009 the licensing authority reached the shop of the petitioner but he found the shop of the petitioner to be closed as also it was found that the



display board was not maintained. A show cause notice dated 25.05.2009 was issued to the petitioner herein to file her show cause within three days alleging therein that the shop of the petitioner was found to be closed on 22.05.2009 and the consumers, upon enquiry, have disclosed that food grains and kerosene oil have not been distributed since past three months. A show cause reply was filed by the petitioner denying the aforesaid allegation on 02.06.2009, whereafter the license of the petitioner was suspended on 04.06.2009, and she was again directed to file a second show cause reply, which was filed on 27.06.2009 by the petitioner. Thereafter, the District Supply Officer, Saharsa by a letter dated 09.03.2010, as per the decision taken by the District Task Force and District Level Selection Committee in its meeting dated 16.01.2010, has though revoked the suspension order pertaining to 12 dealers, however, as far as the petitioner is concerned, it has been stated that a decision has been taken to cancel her license. Subsequently, the Sub-Divisional Officer, Simri Bakhtiyarpur by a letter dated 08.04.2013 informed the petitioner herein that the license of the petitioner has been cancelled.

The learned Sr. counsel for the petitioner has submitted that the impugned orders passed by the District Supply Officer,



Saharsa as also the Sub-Divisional Officer, Simri Bakhtiyarpur are bad both in law as also on facts. It is submitted that as per the settled law laid down by this Court in a catena of judgments as also by the Hon'ble Apex Court, the petitioner cannot be inflicted with two punishments which are; (i) suspension of the P.D.S. license of the shop of the petitioner; and (ii) cancellation of the P.D.S. license of the shop of the petitioner herein, hence the impugned orders are fit to be quashed. In this connection, the learned counsel for the petitioner has referred to a judgment reported in **2013(3) PLJR 956 (Shiv Chandra Jha vs. Harideo Jha)**; paragraph nos. 17 to 24 whereof are reproduced herein below:-

“14. Learned Additional Advocate General Mr. Anjani Kumar has appeared for the State Government. He concedes that the State Government has not preferred appeal against the impugned judgment and order. He has, however, submitted that the doctrine of election should apply.

15. Let us first examine the above referred Orders that govern the licence for fair price shop. Prior to the 2001 Order issued by the Government of India, the licences granted under the Act were governed by the 1984 Order issued in exercise of power conferred by [Section 3](#) of the Act. Clause 4 of the said Order provides, inter alia, for issuance of licence. Clause 10 thereof enjoins a holder of licence or his agent or servant or any other person acting on his behalf not to contravene any of the terms and conditions of the licence. Clause 11 thereof provides, inter alia, for cancellation or suspension of licence in case of contravention of any of the terms and conditions of the licence. It



provides, "... his licence may be cancelled or suspended with regard to one or more trade articles ...". Sub-clause (2) thereof enjoins the concerned authority to give a reasonable opportunity to the licensee against the proposed cancellation. It, however, empowers the authority to suspend the licence for a period not exceeding 90 days, during the pendency or in contemplation of proceeding, without giving any opportunity to the licensee.

16. *The Government of India, in exercise of power conferred by [Section 3](#) of the Act, for maintaining supplies and securing availability and distribution of essential commodities under the public distribution system, issued the 2001 Order. The said Order extends to the whole of India. Clause 14 thereof gives the 2001 Order precedence over anything to the contrary contained in any Order made by the State Government.*

17. *Pursuant to paragraph 5 of the annexe to the 2001 Order, as amended by GSR 392(E) dated 29th June 2004, the Government of Bihar has, in exercise of power conferred by [Section 3](#) of the Act, issued Fair Price Shop Order, 2007. Clause 1 thereof provides for termination of the existing licence and issuance of a new licence. It further provides that the 1984 Order will not apply to fair price shops under the public distribution system. Thus, it is apparent that since the issuance of the 2007 Order, the licence for fair price shops are governed by the 2007 Order. Clause 7 thereof provides for suspension and cancellation of licence. Sub-clauses (ii), (iii), (iv) and (v) thereof read as under:*

"(ii) If any licensee contravenes the provision, terms of the licence, duties, responsibilities and order of the State Government then the Licensing Authority shall suspend/cancel the licence by a written order.

(iii) If F.I.R. is lodged against FPS dealers for 8 Patna High Court LPA No.15 of 2011 dt. 04.02-2013 8 / 11 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.

- (iv) *It shall be necessary to ask show cause by the Licensing Authority to licensee before suspending licence. Licensee will be given a reasonable opportunity stating his case against the proposed cancellation.*
- (v) *Suspension of licence shall be for a maximum period of ninety days. In the meantime records relating to suspension of licence should be sent to the District Level Selection Committee within a fortnight from the date of suspension of licence. The Selection Committee after due enquiry shall recommend for revocation of suspension the Licensing Authority shall act accordingly."*

18. *It is apparent that power to suspend or cancel the licence for contravention of the terms of licence under the 2007 Order is similar to the one under Clause 11 of the 1984 Order. Clause 11 of the 1984 Order provides, "... licence may be cancelled or suspended...". Whereas, Clause 7(ii) of the 2007 Order provides, "...Licensing Authority shall suspend/cancel the licence..."*

19. *Clause 7(ii) is clear and unambiguous. The preposition "or" used in the said sub-clause is disjunctive and has to be read in the same way. The power to suspend or cancel the licence conferred under the said Clause is clearly a power to impose punishment. The two punishments envisaged are mutually exclusive. It may be a punishment of suspending the licence or of cancelling the licence. It cannot be both.*

20. *Although under the 2007 Order power to suspend or cancel the licence for contravention of terms and conditions of the licence, the duties and responsibilities is the same as under 1984 Order, under the 2007 Order, in case where First Information Report is lodged, the licensing authority is enjoined to suspend the licence till the matter is pending before the Court of Law. Under Sub-clause (2) of Clause 11 of the 1984 Order, during the pendency or in contemplation of proceeding, the licensing authority is empowered to suspend the licence for maximum period of 90*



days without giving opportunity of hearing to the licensee. The 2007 Order does not contemplate suspension of licence pending the proceeding or in contemplation of the proceeding.

21. In our opinion, the power to suspend or cancel the licence conferred by Sub-clause (ii) of Clause 7 of the 2007 Order is akin to power to cancel or suspend licence under Sub-clause (1) of Clause 11 of the 1984 Order. The 1984 Order has been subject of consideration by this Court time and again. As early as in 1989 in the matter of *M/s Swami Distributors v. State of Bihar*, {1990 (1) PLJR 210}, a Division Bench of this Court had occasion to consider the provision of the 1984 Order. The Bench held that the power of suspension conferred by Clause 11 of the 1984 Order was akin to one under service jurisprudence; (i) suspension by way of punishment and (ii) suspension pending enquiry and/or contemplated enquiry. The Court held, "... it provides two kinds of suspension, namely, one under clause 11(1) i.e. suspension by way of punishment, and under clause 11(2), suspension during the pendency or contemplation of a proceeding for cancellation of licence. The second kind of suspension, is an interim suspension with a life of ninety days." The aforesaid judgment has been followed consistently and has become settled law. In the matter of *M/s. Sukhwinder Pal Bipan Kumar and others v. State of Punjab and others* (supra), a similar licensing Order prevalent in the State of Punjab was under consideration by the Hon'ble Supreme Court. The Hon'ble Court upheld the legality of second proviso of sub-clause (1) of Clause 11 of that Order that empowered the licensing authority, "to suspend a licence without giving a reasonable opportunity to a licensee of stating his case for a period not exceeding 90 days during the pendency or in contemplation of proceeding for cancellation of his licence."
22. In the matter of *Thakko Choudhary* (supra), a Bench of this Court while considering a similar provision under [Section 42](#) of the Bihar and Orissa Excise Act, 1915 held that [Section 42](#)



empowers the Collector or the prescribed authority to cancel or to suspend a licence.

23. *Once the authority has decided to suspend the licence by way of punishment under Clause 7(ii) of the 2007 Order, he cannot proceed further to cancel the licence as no one can be punished twice for the same act of misconduct or offence. This construction is fortified by sub-clause (iv) which requires the licensing authority to ask show cause before suspending licence. Sub-clause (v) thereof restricts the power of suspension to a maximum period of 90 days. It may be revoked earlier if the selection committee so recommends.*
24. *We have no reason to differ from the aforesaid view consistently taken by this Court. In our opinion, the learned single Judge has rightly held that once the licence was suspended by the licensing authority, it was divested of its power to cancel the licence."*

Per contra the learned counsel for the respondents, referring to the counter affidavit filed in the present case, has submitted that a show cause was issued to the petitioner on 25.05.2009, whereafter the Sub-Divisional Officer, Simri Bakhtiyarpur issued the suspension order and after seeking show cause reply, a report was sent dated 10.10.2009, regarding revocation of license, to the District Supply Officer, Saharsa, whereafter the District Supply Officer by the impugned order dated 09.03.2010 had communicated the decision of the Committee to cancel the license of the petitioner and then the Sub-Divisional Officer, Simri Bakhtiyarpur, Saharsa vide Memo dated 08.04.2013 had communicated to the petitioner that her license has been



cancelled.

The learned counsel for the respondents has not been able to controvert the position existing in law, as has been canvassed herein above on behalf of the petitioner herein.

Having regard to the facts and circumstances of the case as also the law laid down by the learned Division Bench of this Court in the case of *Shiv Chandra Jha vs. Harideo Jha* (supra), this Court is of the view that admittedly the respondents could not have passed two orders of punishment simultaneously i.e. (I) order of suspension of P.D.S. license of the shop of the petitioner; (ii) order of cancellation of P.D.S. license of the petitioner herein. Thus this Court is of the view that once the license was suspended, the respondent authority was divested of its power to cancel the license.

For the reasons mentioned herein above, the impugned order dated 09.03.2010 passed by the District Supply Officer, Saharsa, whereby and where under a decision has been taken to cancel the license of the petitioner herein as also the communication dated 08.04.2013 issued by the Sub-Divisional Officer, Simri Bakhtiyarpur, whereby and where under the petitioner has been informed that the license of her shop has been cancelled, are quashed, however, with liberty to the



respondents to proceed in the matter, in accordance with law, if
so advised.

The writ petition is allowed to the aforesaid extent.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
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