

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3317 of 2018

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Anil Kumar son of Late Sarjug Prasad Singh Resident of Village-Diha, Police Station- Tharthari, District - Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Food and Consumer Protection Department, Old Secretariat, Bihar, Patna.
2. The Commissioner, Patna.
3. The District Magistrate, Nalanda at Biharsharif.
4. The Sub-Divisional Magistrate, Hilsa, District - Nalanda.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Vibhuti Ranjan Sonvadra

For the Respondent/s : Mr. S. RAZA AHMAD, AAG-5

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 25-10-2018

The present writ petition has been filed for quashing the order dated 12.12.2009 passed by the Sub-Divisional Officer, Hilsa (Nalanda) by which the P.D.S. License of the petitioner has been cancelled. The petitioner has further prayed for quashing of the appellate order dated 15.11.2011 and the revisional order dated 01.08.2017.

The brief facts of the case are that the petitioner had been granted P.D.S. License No. 9 of 2007 (Old License No. 82/84) for running a fair price dealership under the Public Distribution System of Gram Panchayat Raj Asta under Tharthari Block in the District of Nalanda. Subsequently an FIR dated 14.03.2007 was lodged under



Section 7 of the E.C. Act and on that ground the P.D.S. License of the shop of the petitioner was suspended by the S.D.O., Hilsa by an order dated 05.07.2007. Thereafter a show cause notice was issued to the petitioner, which was duly replied by the petitioner herein. However, while the order of suspension was still in force, the Sub-Divisional Officer, Hilsa by an order dated 12.12.2009, cancelled the license of the petitioner herein. The petitioner had then filed an appeal against the aforesaid order dated 12.12.2009 which was rejected and thereafter the revision filed by the petitioner was also dismissed.

The learned counsel appearing for the petitioner has 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 has supported the impugned orders and has submitted that recommendation had already been made for revocation of the license of the petitioner herein. However, upon a query by this Court, the learned counsel for the respondents has been unable to show that the order of suspension of the P.D.S. license of the petitioner has actually been revoked.

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 (supra), this Court is of the view that admittedly the respondents were precluded from passing two orders of punishments simultaneously i.e. (i) order of suspension of PDS license of the shop of the petitioner; and (ii) order of cancellation of PDS license of the petitioner herein. Hence, once the license was suspended, the respondent authority was divested of its power to cancel the license. Thus the impugned orders dated 12.12.2009 passed by the Sub-Divisional Officer, Hilsa (Nalanda) as also the order dated 15.11.2011 passed by the District Magistrate, Nalanda at Bihar Sharif are quashed.

The writ petition is allowed.

(Mohit Kumar Shah, J)

S.Sb/-

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