

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (C) No.399 of 2018

Shivram Agrawal, S/o Late Rajajram Agrawal, aged about 52 years, Proprietor M/s Gaurav Filling Station, Ward No. 16, Housing Board Corner, Camp-2, Bhilai, District Durg acting in the premises through its general power of attorney holder Shri Rakesh Agrawal, S/o Late Rajajram Agrawal, aged about 44 years, R/o A206, Kuber Apartment, Shankar Nagar, Raipur, Tahsil & District Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Ministry of Food & Civil Supplies, Mahanadi Bhawan, Mantralay, Naya Raipur, District Raipur.
2. The Collector (Food Department), District Durg.
3. The Food Controller, District Durg.
4. The Food Inspector, Bhilai, District Durg.

---- Respondents

For Petitioner: Mr. B.P. Sharma and Mr. Hari Agrawal, Advocates.
 For Respondents/State: Mr. B. Gopa Kumar, Deputy Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

13/02/2018

1. Heard.
2. Learned counsel for the petitioner submits that on the one hand, the application of the petitioner for renewal of license to run petrol pump is pending consideration since 14-11-2017 and on the other hand, on 24-1-2018, an order has been passed directing the petitioner to close the petrol pump for want of renewal of license which is unsustainable in law in view of the decision of the Supreme Court in the matter of **Murarilal Jhunjunwala v. State of Bihar and others**¹ followed by this Court in the matter of **Mukesh Hariani v. State of Chhattisgarh**².

1 1991 Supp (2) SCC 647

2 2015 Cri.L.J. (NOC) 16 (Chh.)

3. Learned State counsel would submit that the application for renewal would be decided within a period of two weeks.
4. In **Murarilal Jhunhunwala** (supra), similar question came up for consideration before the Supreme Court in respect of criminal proceedings initiated for violation of the control order. Their Lordships have held that technically, the authorities may be justified in prosecuting the appellant for carrying on the business without obtaining the license, but the appellant therein having found to have done all that he could do under the law, has not been told at any time that he is required to do anything more than what he has already done. Relevant extract is as under: -

“5. Technically, the authorities may be justified in prosecuting the appellant for carrying on the business without obtaining the licence. But the facts of the case reveal that the appellant is not to be blamed. If there is anybody to be blamed in the case it is only the Licensing Authority who has failed to perform its statutory duties. The appellant has done all that he could do under the law. He has not been told at any time that he is required to do anything more than what he has already done. For successive four years the Licensing Authority went on accepting the application for licence with the necessary licence fees, and at no time it denied the claim of the appellant. Its silence seems to demonstrate the total lack of awareness to the rights of the appellant. To cover up its own inaction and lethargic attitude, it seems to have directed the prosecution of the appellant. The attitude of the Licensing Authority is beyond our comprehension. It is arbitrary of the face of it and unjustified on every aspect of it. We fail to understand why the appellant should be prosecuted when he on his part has done everything for obtaining the licence. The appellant is

legitimately entitled to the licence which has been unreasonably withheld from him. It would be indeed wrong on the part of the Licensing Authority to prosecute the appellant.”

5. The aforesaid principle of law laid down by the Supreme Court has also been followed by the High Court of Orissa in the matter of **Rekha Gupta v. Collector, Balasore**³.
6. In view of the aforesaid authoritative pronouncement of the Supreme Court followed by this Court, the licensing authority cannot sit tight over the matter of renewal of license and issue notice for closure of petrol pump for want of license.
7. In view of the above, the licensing officer – Collector, Durg is directed to consider and dispose of the application of the petitioner within two weeks from the date of receipt of a copy of this order, after hearing the petitioner and in the meanwhile, for the aforesaid period, no coercive steps shall be taken against the petitioner.
8. With the aforesaid observation, the writ petition finally stands disposed of. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma