

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24130 of 2018

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Laxman Jha @ Lakshman Jha, Son of Late Rajkant Jha, Resident of Village – Ward No. 5 Jalwar, Post – Kamrauli, Police Station – Simri, District – Darbhanga.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Food and Civil Supply Department, Government of Bihar, Patna.
2. The Secretary, Food and Civil Supply, Government of Bihar, Patna.
3. The Divisional Commissioner, Darbhanga.
4. The District Magistrate, Darbhanga.
5. The District Supply Officer, Darbhanga.
6. The Licensing Authority cum the Sub-Divisional Officer, Sadar, Darbhanga.
7. The Block Supply Officer, Bahadurpur, District – Darbhanga.

... .. Respondents

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with

Civil Writ Jurisdiction Case No. 25020 of 2018

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Kanchan Kumari W/o Abhishek Kumar Yadav @ Abhishek Kumar R/o Village Khajurwara, P.O- Jahangir Tola, Police station - Kamtaul, District - Darbhanga being PDS Dealer under Gram Panchayat Radhi Utri, Block- Jale, Bearing License No. 31/2018

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Food and Civil Supply Department, Government of Bihar, Patna.
2. The Secretary, Food and Civil supply, Government of Bihar, Patna.
3. The Divisional Commissioner , Darbhanga.
4. The District Magistrate , Darbhanga.
5. The District Supply Officer, Darbhanga.
6. The Sub-Divisional Officer, Sadar, Darbhanga.
7. The Block Supply Officer cum Block Development officer, Jale District – Darbhanga.

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 2831 of 2019

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Gopalji Thakur, Son of Late Jagdish Thakur, Resaident of Village- Jalawar Kamrauli, Post- Kamrauli, Police Station- Simri, District- Darbhanga.



... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Food and Civil supply Department, Government of Bihar, Patna.
2. The Secretary, Food and civil Supply, Government of Bihar, Patna.
3. The Divisional Commissioner, Darbhanga.
4. The District Magistrate, Darbhanga.
5. The District Supply Officer, Darbhanga.
6. The Licensing Authority cum The Sub- Divisional Officer, Sadar, Darbhanga.
7. The Block supply Officer, Bahadurpur, District-Darbhangha.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 24130 of 2018)

For the Petitioner/s : Mr. Sanjay Kumar, Advocate
Mr.Pankaj Kumar Jha, Advocate

For the Respondent/s : Mr. Ac to Sc4

(In Civil Writ Jurisdiction Case No. 25020 of 2018)

For the Petitioner/s : Mr. Sanjay Kumar, Advocate
Mr.Pankaj Kumar Jha, Advocate

For the Respondent/s : Mr. Ac to Sc4

(In Civil Writ Jurisdiction Case No. 2831 of 2019)

For the Petitioner/s : Mr. Sanjay Kumar, Advocate
Mr.Pankaj Kumar Jha, Advocate

For the Respondent/s : Mr. Ac to Sc4

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 06-03-2019 Learned counsel for the petitioner files a supplementary affidavit in C.W.J.C. No. 24130 of 2018. Learned counsel for the State files a counter affidavit in C.W.J.C. No. 25020 of 2018.

Learned counsel for the State submits that the counter affidavit filed in C.W.J.C. No. 25020 of 2018 will be adopted for the purpose of contesting C.W.J.C. No. 24130 of 2018.

With the consent of the parties all the three writ



applications have been taken up together for consideration and disposal by a common order.

Re : C.W.J.C. No. 24130 of 2018

Petitioner is aggrieved by the order dated 25.06.2018 as contained in Annexure-2 to the writ application by which the license of the Public Distribution Shop (in short 'PDS') of the petitioner has been placed under suspension.

A perusal of the order as contained in Annexure-2 would show that the same has been passed by the Licensing Authority-cum-Sub-Divisional Officer, Sadar, Darbhanga in the light of the provisions contained under Rule 28 of the Bihar Targeted P.D.S. (Control) Order, 2016 (hereinafter referred to as 'the Control Order of 2016').

Rule 28 of the Control Order of 2016 reads as follows:-

“28. Actions to be taken against a licensee after a FIR lodged.- If an FIR is lodged against a licensee under the Essential Commodities Act, 1955 or for any other criminal cases, and he is sent to jail or he goes fugitive, his license shall be suspended by the licensing authority with immediate effect, and after serving show cause notice upon him in accordance with Civil Procedure Code and giving him sufficient opportunity to present his case, a lawful action shall be taken within 180 days, as far as possible.”

Learned counsel for the petitioner submits that the literal interpretation of Rule 28 of the Control Order of 2016



would lead to an irresistible conclusion that merely because an FIR has been lodged against a licensee, the provision does not envisage suspension of the license. The purpose of Rule '28' of the Control Order of 2016 is that in case a licensee against whom FIR is lodged is sent to jail or he goes fugitive his license shall be suspended by the licensing authority with immediate effect and thereafter a show cause notice shall be served upon him in accordance with the Civil Procedure Code and after giving him sufficient opportunity to present his case, a lawful action shall be taken within 180 days, as far as possible.

Learned counsel for the petitioner submits that in the present case though the FIR was lodged against the petitioner but he was not sent to jail as he was granted anticipatory bail by this Court. He had also not gone fugitive. The impugned order nowhere says so. It is submitted that in such circumstance the order contained in Annexure-2 suspending the license of the petitioner could not have been passed by the Licensing Authority.

Submission is that the order contained in Annexure-'2' is without jurisdiction and is not in consonance with the provisions of Rule 28 of the Control Order of 2016. It is further submitted that more than 180 days have also expired



after passing of the order as contained in Annexure-2 but till date no order could be passed by the Licensing Authority.

Learned counsel for the State has though not filed any counter affidavit but as stated above he has relied on the plea taken in the counter affidavit filed in C.W.J.C. No. 25020 of 2018. In course of argument, however, learned counsel for the State has fairly taken a stand as regards the interpretation of legal provision as argued on behalf of the petitioner that in the facts of the present case where the petitioner was not sent to jail, the order as contained in Annexure- '2' could not have been passed.

Having heard learned counsel for the petitioner and learned counsel for the State, on the face of the provisions of Rule 28 of the Control Order of 2016, this Court is of the considered view that there cannot be a second opinion as regards the intent of the rule makers. Rule '28' of the Control Order of 2016 is clear in it's purpose and the context in which it is to be invoked. Only in such cases where an FIR has been lodged against the licensee under the Essential Commodities Act, 1955 or for any other criminal cases and he is sent to jail or goes fugitive license will be suspended. Such findings are required to be recorded while suspending a license under Rule



‘28’ of the Control Order of 2016.

The words ‘and’ occurring in between the words “If an FIR is lodged against a licensee under the Essential Commodities Act, 1955 or for any other criminal cases and (emphasis supplied) he is sent to jail or he goes fugitive” makes it clear that it has been used as a conjunction. Thus, both the requirements are required to be satisfied before suspending the license of a PDS dealer.

In the present case, in the opinion of this Court the Licensing Authority has acted without jurisdiction and has passed the order as contained in Annexure- ‘2’ without adhering to the requirements of Rule 28 of the Control Order of 2016.

Annexure- ‘2’ is, thus, bad in law. It is set aside accordingly. The writ application is allowed. The consequential benefits shall follow.

Re : C.W.J.C. No. 2831 of 2019

In the present case, the petitioner is aggrieved by the order dated 18.06.2018 as contained in Annexure-2 to the writ application by which the license of the Public Distribution Shop of the petitioner has been placed under suspension.

Learned counsel for the petitioner submits that the facts of the case are similar to C.W.J.C. No. 24130 of 2018. It is



submitted that in this case also the petitioner was granted anticipatory bail by this Court in Criminal Misc. No. 60635 of 2018 (Annexure-7 to the writ application). It is submitted that since the petitioner was never sent behind the bar and had not gone fugitive, there was no occasion for the Licensing Authority to suspend the license of the petitioner.

It is submitted that the impugned order nowhere says that the petitioner was put behind the bar or had gone fugitive. It is further submitted that more than six months time have elapsed after the impugned order was passed but till date no further order has been passed by the Licensing Authority. In such circumstance, Annexure-2 has lost its effect.

Learned counsel for the State is present. The stand of learned counsel for the State as regards interpretation of Rule '28' of the Control Order 2016 has already been taken note of above while considering C.W.J.C. No. 24130 of 2018.

It is not denied that Annexure-2 issued by the Licensing Authority is without recording any reason saying that either the petitioner was sent to jail or had gone fugitive.

In the aforesaid circumstance as this Court has considered the provisions of Rule 28 of the Control Order of 2016 and has found that in absence of the fact that the licensee



had been sent to jail or had gone fugitive after lodging of FIR, the license of the PDS of the petitioner could not have been placed under suspension, this Court finds that the case is covered by the view taken by this Court in C.W.J.C. No. 24130 of 2018.

In result, the impugned order as contained in Annexure-2 to the writ application is set aside. The consequential order shall follow.

Re : C.W.J.C. No. 25020 of 2018

In the present writ application also the prayer of the petitioner is to quash the order dated 25.10.2018 contained in Memo No. 753 issued by respondent no. 6. By the impugned order as contained in Annexure-4, the license of the Public Distribution Shop (in short 'PDS') of the petitioner has been suspended with immediate effect.

Learned counsel for the petitioner submits that in the present case also the petitioner was never sent behind the bar and had not gone fugitive, therefore, there was no occasion for the Licensing Authority-cum-Sub-Divisional Officer, Sadar, Darbhanga to suspend the license of the petitioner. It is pointed out that the petitioner was granted anticipatory bail by learned Sessions Judge, Darbhanga in A.B.P. No. 1760 of 2018,



therefore, there was no reason as to why the Licensing Authority could have been suspended the license by invoking Rule 28 of the Control Order of 2016. The impugned order nowhere records any finding to satisfy the requirement of Rule 28 of the Control Order 2016.

Learned counsel for the State has though submitted that in this case six months time has not elapsed but considering the legal position as enunciated above with regard to Rule 28 of the Control Order of 2016, this Court will take an identical view as has been taken in C.W.J.C. No. 24130 of 2018. The order as contained in Annexure-4 is without jurisdiction and hence, the same is set aside accordingly. Consequential order shall follow.

(Rajeev Ranjan Prasad, J)

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