

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.363 of 2018

In
Civil Writ Jurisdiction Case No.16391 of 2016

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Md. Noman, son of Late Abdul Mannan, resident of Matiyari, P.O.- Matiyari,
Police Station-Jokihat, District - Araria.

... .. Appellant/s

Versus

1. The State of Bihar through District Magistrate, Araria.
2. The District Supply Officer, District- Araria.
3. The Sub-Divisional Officer, Araria.
4. The Block Supply Officer, Block- Jokihat, District - Araria.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. N.K. Agrawal, Sr. Advocate Mr. D.N. Tiwari, Advocate Mr. Dilip Kumar Singh, Advocate
For the Respondent/s	:	Mr. S.Raza Ahmad, A.A.G. 5 Mr. Alok Ranjan, A.C. to A.A.G. 5

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 04-01-2019

Heard Shri N.K. Agrawal, learned Senior Counsel for
the appellant.

The challenge raised is to the refusal of discretion by
the learned Single Judge vide judgement dated 8th February, 2018
declining to interfere in the matter on the finding that, admittedly,
the appellant had not deposited the renewal fee within the
stipulated period as per Clause 2.8(b) of the Public Distribution
System Control Order, 2001.



Learned counsel submits that the delay was only of a few days and, therefore, this Court may grant indulgence to that effect, inasmuch as, the license had been granted to the appellant on compassionate basis. Learned counsel has also relied on an order passed on 28th June, 2016 in C.W.J.C. No. 1361 of 2014 which, in turn, relies on an order dated 2nd March, 2007 passed in C.W.J.C. No. 13734 of 2004.

Shri Raza Ahmad, learned A.A.G. 5 for the State of Bihar, has invited the attention of the Court to the provisions to contend that the learned Single Judge does not seem to have committed any error in refusing to exercise discretion keeping in view the provisions of the Control Orders of 2001.

Clause 2.8 (b) of 2001 Order is extracted hereinunder.

“(b) **Renewal Fee.** - The Licence shall be renewed for the period of five years by the Licensing Authority. On payment of licence fee of Rs. 400/- (Four hundred) only through Treasury Challan alongwith the application in prescribed Form III. Licensing Authority will renew the licence. New licences will be renewed within one month after lapse of the period of five years from the date of issue of the licence. Late fees will be charged at the rate of Rs. 50/- per month and such renewal by payment of late fee will be permissible within eight months of the date validity of the licence.

(i) The Licensing Authority shall provide renewed licence to every licensee within a month,

(ii) Licence shall not be renewed during the suspension of the licence. After revocation of suspension the licence may be renewed by payment of full renewal fee in one instalment.”

A perusal thereof would leave no room for doubt that the new license has to be renewed within one month after lapse



of five years. The validity of license, therefore, is of 5 years and the renewal thereof is subject to an offer of renewal together with the payment of requisite fee as prescribed in the aforesaid provision. Apart from this, a further concession has been granted that such renewal by payment of late fee would be permissible within 8 months of the date of the validity of the license. Learned counsel submits that the date of validity of the license should be construed to also include the additional period of one month during which renewal is contemplated under the aforesaid Control Order and, therefore, if the period of one month is added then the license having been granted for five years, which expires on 31st March, 2015 in the present case, the renewal could have been applied for up to 31st December, 2015. In such a situation, if the deposit of renewal fee was made on 30th December, 2015, the same cannot be treated to be invalid or incapable of being considered. Even otherwise, it is submitted on equities that the appellant did make an effort to get the license renewed after making payment as contemplated under the Control Order, 2001 and had also continued to supply the essential commodities under the license during the said period.

Shri Raza Ahmad, on the other hand, contends that this period of one month which is sought to be included is



impermissible keeping in view the clear language utilized in the Clause extracted hereinabove where the period of license itself is limited for a period of five years and the same cannot be, therefore, construed to be a license for a period of five years and one month pending renewal.

Having considered the submissions raised, there is no doubt that the grant of license stipulates a period which is five years. This, admittedly, did expire on 31st of March, 2015. The provision of renewal is optional. It is for the party concerned to get the license renewed or otherwise. The licensee cannot be permitted to operate the license beyond the period which is contemplated in the original license itself. The provision of renewal has been made in order to extend the validity of the license beyond the period which is prescribed in the original license itself. Consequently, the period of one month is provided for the purpose of facilitating renewal and not for extending the tenure of the original license. The submission, therefore, raised by the learned counsel for the appellant that the period of one month, which is meant for applying for renewal, should be construed as the period of validity of license is unacceptable.



For all the reasons aforesaid, the conclusion drawn by the learned Single Judge cannot be said to be contrary to the provisions of the Control Order, 2001.

The decision, which has been relied on by the learned counsel for the appellant in C.W.J.C. No. 1361 of 2014 (Supra) itself states that the said order would not be treated as a precedence. Even otherwise, the said order is by a learned Single Judge and would not be binding keeping in view the clear interpretation of the relevant Clause indicated hereinabove.

In view of this, the impugned judgement does not call for any interference. It would, however, be open for the appellant to make a request to the licensing authority to grant a fresh license or otherwise that may be admissible or permissible on the facts of the peculiar case. The dismissal of appeal will not be an impediment to the same.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

K.C.Jha/Uma/-

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