

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 5659 of 2020

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Kanhaiya Singh, aged about 65 years, (Male) Son of Late Sudama Singh,
resident of Village - Jogata, P.S.- Chaandi, District- Bhojpur at Ara.

... .. Petitioner/s

Versus

1. The State of Bihar, through the District Magistrate, Ara.
2. The Sub-Divisional Officer, Sadar Ara, District- Bhojpur at Ara.
3. The Block Supply Officer, Koilwar, District- Bhojpur at Ara.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. N K Agrawal, Sr. Advocate
For the Respondent/s : AC to GA 2

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 19-06-2020

The matter has been heard *via* video conferencing due
to lockdown imposed on account of the COVID-19 pandemic.

2. Heard Mr. N K Agrawal, learned senior counsel and
learned AC to GA 2 for the State.

3. The petitioner has moved the Court for the following
relief:

*“That the present writ application is
being filed on behalf of petitioner for quashing the
order contained in Memo No. 733 dated 26.04.2020
passed by the S.D.O. Sadar, Ara (respondent no. 2)
by which only on the ground that on 24.04.2020 a
FIR (criminal case) has been registered against the
petitioner, petitioner’s PDS license no. 24/2007 has
been cancelled.”*



4. Pursuant to the earlier orders of the Court, counter affidavit and supplementary counter affidavit have been filed on behalf of the authorities.

5. Learned counsel for the petitioner submitted that the order has been passed in violation of the provisions of Clause 28 of the Bihar Targeted Public Distribution System (Control) Order, 2016 (hereinafter referred to as the 'Control Order, 2016'). Learned counsel submitted that the same envisages that if action is to be taken against a PDS dealer, on the ground that a criminal case is instituted, only if the person is arrested or absconds, his licence can be suspended and thereafter, upon following the due procedure, by issuing show cause and giving opportunity, the authority may finally take a view with regard to cancellation of the licence. It was submitted that in the present case, no show cause was issued and straightway, his licence has been cancelled on 26.04.2020, only on the ground that Chandi PS Case No. 54 of 2020 dated 24.04.2020, had been lodged against him with regard to malpractices in running of the PDS shop. Learned counsel submitted that various Benches of the Court have held that the power to cancel licence only on the ground of lodging of an FIR is not available to the authorities and have interfered in such orders of cancellation.



6. Learned counsel for the State submitted that the cancellation is basically under Clause 27 of the Control Order, 2016, which stipulates that if a licensee violates any provisions of the order or fails to comply with the duties and responsibilities assigned to him, his licence shall be cancelled by the Licensing Authority and further that such cancellation of license shall not affect other actions initiated/initiable under the Essential Commodities Act, 1955. However, on a query of the Court as to even action under Clause 27 of the Control Order, 2016, requires giving sufficient opportunity to the person to explain his position against the proposal of cancellation of his licence, whether the same has been granted to the petitioner, learned State counsel fairly submitted that no show cause has been issued. He further submitted that even as per the Central guidelines with regard to the manner in which a PDS distributor is to conduct his business, the petitioner was found violating the same and, thus, it was also a cause for such cancellation. It was submitted that the petitioner has also miserably failed to follow the rules/regulations which he is supposed to comply, which is also in contravention of the law laid down by the Hon'ble Supreme Court in Civil Appeal Case No. 196 of 2001.



7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, though it is an admitted position that no show cause has been issued to the petitioner before straightway cancelling his licence, making action clearly beyond jurisdiction, however, keeping in mind the fact that in such matters where a licence is given to a person under the Public Distribution System, specifically to give foodgrains and other provisions to the targeted section which is in need of such support by the State and there being serious allegations which have been found true in the investigation made by the authorities and also in the police case, as has been revealed in the case diary, copy of which the Court had called for and is available with learned counsel for the State, the Court would not order for immediate revival of the licence of the petitioner. Thus, balancing the equities and taking into account the larger public interest, the authorities are directed to issue a formal show cause to the petitioner. The same be done within three weeks from today detailing the charges against him, enclosing relevant materials in support thereof. The petitioner shall thereafter submit his reply to the authorities within three weeks from receiving the show cause. The authorities concerned shall pass a reasoned order within two weeks from the date of submission of the show cause by the



petitioner. The status of the original licence of the petitioner, which has been cancelled, shall abide by the order passed by the Licensing Authority. The order impugned cancelling the licence shall not come in the way of the authorities in passing a fresh order and upon passing of the fresh order, the present impugned order shall automatically stand superseded.

8. The Court would only indicate that the authorities as well as the petitioner shall ensure that there is strict compliance of the time frame as indicated in the order.

9. The application stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

P.Kumar/Anand Kr.

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