

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18102 of 2018

Viraj Saw Son of Raghupat Saw resident of Village Mayapur, Thana
Daudnagar, District Aurangabad.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The District Magistrate, Aurangabad.
3. The Sub Divisional Officer, Daudnagar, District Aurangabad.
4. The Block Supply Officer, Aurangabad.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Dhananjaya Nath Tiwari
For the Respondent/s : Mr.Arvind Ujjwal-SC4

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

3 30-09-2020 Heard Mr. N. K. Agrawal, the learned senior counsel
for the petitioner and Mr. Arvind Ujjwal, the learned SC 4.

The matter has been taken up through video
conferencing.

The petitioner, in this writ petition, seeks quashing of
the order dated 16.06.2017 passed by the Sub Divisional
Officer, Daudnagar, Aurangabad (Annexure-1) by which the
license of the petitioner was suspended in exercise of power
under Clause 28 of the Bihar Targeted P.D.S. (Control) Order,
2016 on the ground that a First Information Report has been
registered against the petitioner. The petitioner further
challenges the order dated 31.08.2017 (Annexure-3) by which
the Sub Divisional Officer, Daudnagar cancelled the petitioner's
license and also the order of the District Magistrate, Aurangabad
dated 23.07.2018 passed in Appeal No. 51 of 2017 (Annexure-
4) by which the order of cancellation of license of the petitioner



has been affirmed.

The learned senior counsel for the petitioner submits that order of suspension of license of the petitioner is on nonest ground. Clause 28 of the Bihar Targeted P.D.S. (Control) Order, 2016 envisage that suspension of the license could be done on lodging of the FIR if the petitioner is lodged in jail or turn fugitive but even after institution of FIR the petitioner was not arrested nor he was declared fugitive. The petitioner was granted anticipatory bail, therefore, two essential conditions for suspension of license of a P.D.S. licensee that after institution of the FIR the licensee either lodged in jail or became fugitive are not fulfilled and, thus, the suspension of license is based on nonest ground and the subsequent orders canceling the license of the petitioner on nonest ground as well as the appellate order passed by the District Magistrate in appeal are also illegal and not sustainable. It is also submitted that this court held in the case of Radhe Krsishna v. the State of Bihar & Ors (CWJC No. 16733 of 2016) that order of suspension of license merely on the ground of lodging of the FIR is not sustainable in the eye of law.

Mr. Arvind Ujjawal, the learned SC 14, has not disputed the facts.

Having considered the facts I find that license of the petitioner has been suspended on mere institution of the FIR and other two conditions, which are enumerated in Clause 28 of the Bihar Targeted P.D.S. (Control) Order, 2016 that after institution of the FIR the licensee is put in jail or he became fugitive, are not fulfilled, therefore, the licensing authority has suspended the license of the petitioner on nonest ground without looking into the provisions as enumerated in Clause 28 of the Bihar Targeted P.D.S. (Control) Order, 2016. Subsequently, the licensing



authority cancelled the license of the petitioner and the appellate authority also committed the same illegality by affirming the order of licensing authority, which is based on nonest ground.

Accordingly, the order dated 16.06.2017 passed by the Sub Divisional Officer, Daudnagar (Annexure-1), the order dated 31.08.2017 (Annexure-3) and the appellate order dated 23.07.2018 (Annexure-4) are set aside. This writ petition is allowed with a direction to the respondents to restore the supply to the petitioner forthwith. However, the respondents are at liberty to proceed against the petitioner, in accordance with law.

(Prabhat Kumar Jha, J)

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