

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8756 of 2020

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Hamida Khatoon, Wife of Late Shamim Ahamad, Resident of Village
Deodha, Block Jaynagar, P.S. Deodha, District Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary, Food and Consumer Protection,
Government of Bihar, Patna.
2. The District Magistrate, Madhubani.
3. The Sub Divisional Officer Jaynagar, Madhubani.
4. The Block Supply Officer, Jaynagar, District - Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar Jha, Advocate
For the Respondent/s : Mr. Alok Ranjan, A.C. to AAG-5

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

2 05-11-2020 Since as of now the Courts have not resumed normal

physical hearing, the matter has been listed today for

consideration through video conferencing.

The learned counsels are appearing and making
submissions from their residence. The Court Master and
Secretary are also part of this virtual Court proceedings from
their homes, all with the aid of audio visual technology.

Heard learned counsel for the petitioner and the
learned counsel for the State.

Petitioner is aggrieved by the order dated
26.07.2019, 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, Jayanagar 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 licence



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 she was not sent to jail as she surrendered before the S.D.J.M., Madhubani on 09.08.2019 and was granted bail on the same day. She 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 licence 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.

Learned counsel for the State has though not filed any counter affidavit but in course of argument, however, he 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.

Suspension of PDS licence under similar circumstances has been considered by this Court in C.W.J.C. No.24130 of 2018, where neither the licensee had been sent to jail, nor was he a fugitive, as in the instant case. This Court has found the order of suspension of PDS licence to be legally unsustainable after considering the purpose of Rule 28 of the Control Order of 2016, as also the facts and circumstances in which power to suspend PDS licence may be invoked under Rule 28. This Court would consider it useful to quote the relevant extract, which is as follows :

“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."

Having considered the facts and circumstances of the case of Laxman Jha @ Lakshman Jha, this Court would find that the petitioner's case is squarely covered by the decision in C.W.J.C. No.24130 of 2018.

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

This Court would expect that the petitioner's counsel would honour his undertaking in the instant proceedings regarding supply of the requisite court fee etc. within two weeks from the date he is called upon to do so by the office.

(Madhuresh Prasad, J)

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