

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5689 of 2021

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Surendra Kumar @ Surendra Yadav S/o Ramavarat Yadav, R/o Village-jamlapar, P.O.-Punar, P.S.-Atri, District-Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner, Magadh Division, Gaya.
3. The District Magistrate Cum-Collector, Gaya.
4. The Sub Divisional Officer, Neemchak Bathani, Khijar Sarai, Gaya.
5. The District Supply Officer, Gaya.
6. The Block Supply Officer, Atari, Gaya.
7. The Block Supply Officer, Mohara Prakhand, Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rama Kant Singh, Advocate
For the Respondent/s	:	Mr. S. Raza Ahmad (Aag5)
		Mr. Alok Ranjan, AC to AAG 5

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 22-12-2021

Heard learned counsel for the parties.

“(i) For quashing of the order dated 05.09.16 vide memo no.1726 passed by the respondent no.4 in bearing licence no.32/08 whereby and whereunder the licence of the petitioner for public Distribution system for Gram Panchayat Tetua in Atari Block in the District of Gaya has been cancelled.

(ii) For quashing of the order dated 13.06.17 vide memo no.919 issued by the respondent no.4 whereby and whereunder the licence of the petitioner for public Distribution

system for Gram Panchayat Tetua in Atari Block in the District of Gaya has been cancelled.

(iii) For quashing of the order dated 17.10.17 passed in P.D.S. supply appeal no.32/17 issued by the respondent no.3 whereby and whereunder an appeal filed by the petitioner against the order dated 13.06.17 has been rejected.

(iv) For quashing of the order dated 07.12.2019 passed in supply revision appeal no.167/2017 by the respondent no.2 whereby and whereunder revision filed by the petitioner against the order dated 17.10.2017 has been rejected.

Further the respondents be directed to restore the licence of the public distribution system of the petitioner with immediate effect.

And/or for any other appropriate relief(s) to the petitioner for which he may be found entitled to in the eye of law.”

Petitioner was a PDS dealer having licence no.6/2001 in village Jamalpur under Atari Block in the district of Gaya which was subsequently renewed and no complaint was made by any beneficiaries regarding distribution of food-grains to the ration card holders. Inspection was made by the Block Supply Officer of the public distribution shop of the petitioner on 28.8.2016 and during inspection, irregularities were found upon which, FIR being FIR No.179 /16 was instituted against the petitioner under Section 7 of the E.C. Act and on basis of report of Block Supply Officer dated 31.8.2016, the PDS licence of the petitioner was cancelled by order dated 05.09.2016 against which petitioner filed an appeal before the District Magistrate, Gaya and order

passed by the SDO / Licensing Authority was set aside by order dated 27.4.2017 passed in Supply Appeal No.59/2016 and thereafter a fresh proceeding was initiated against the petitioner in which, show cause dated 6.6.2017 was issued with regard to three charges of which, petitioner submitted his reply on 12.6.2017, however, the licensing authority / SDO, Neemchak Bathani, Gaya by order dated 30.06.2017 cancelled the PDS licence of petitioner for violating the terms and conditions of licence granted under Bihar Targeted Public Distribution System (Control) Order, 2016 as well as direction of Hon'ble Supreme Court.

It appears that Block Supply Officer after conducting the inspection of the shop, informed SDO/Licensing Authority by letter dated 31.8.2016 with respect to institution of FIR being FIR No. 179/16 under Section 7 of E.C. Act and petitioner is absconding as such, alternative arrangement shall be made for distribution of food-grains, beneficiaries. Sections 28, 29 and 30 of the Bihar Targeted Public Distribution System (Control) Order, 2016 is reproduced below:-

“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.

29. Consequence of Conviction. - The license of a licensee convicted by a competent court for violation of an order made under section 3 of the Essential Commodities Act, 1955 or for any other offence shall be cancelled by the licensing authority by a written order :

Provided that if such a conviction is annulled in appeal or revision, the license shall be restored by the licensing authority, if such a licensee within one month from the date on which such a annulment order is passed makes a written representation to the licensing authority with attaching certified copy of such an order and with payment of license fee equal to a new license fee through treasury challan.

30. Distribution of essential commodities after a license is suspended or cancelled. - The block supply officer/ in charge supply officer / supply inspector shall get the food grains and other essential commodities available to the licensee at time of his license being suspended/ cancelled, disbursed under his care to the concerned consumers at the prevailing rates and quantities within 30 days from the date of the receipt of such order, and the amount so collected shall be handed over to the licensee/ his representative :

Provided that if the commodities could not be disbursed within 30 days due to unavoidable reasons, the time period of disbursement, which shall be maximum of 60 days, shall be extended by the licensing authority upon the report of the block supply officer/ in charge block supply officer /supply inspector.

In view of said sections, there is no provision of cancellation of licence on instituting of FIR and licence can be suspended only in case of arrest of dealer or if he becomes absconder and during said period, the PDS shop can be attached to some other shop, as interim measure. However, in present case, the licence of petitioner itself was cancelled, although no such provision is in the 2016 Control Order.

On inspection made by Block Supply Officer and if violation of any terms and conditions of licence is found then the SDO / Licensing Authority on basis of said report can issue show cause with a copy of inquiry report and cancel the

licence of the dealer. In present case, although three charges have been alleged against petitioner, however, in Section 25 of the 2016 Order, cancellation of licence can be made when irregularities as stated in Section 25 is established. Section 25 of the Bihar Targeted Public Distribution System (Control) Order, 2016 reads as follows:-

“25. Action against a licensee. - (i) In view of the order passed by the Hon'ble Supreme Court in Civil Writ 196/01, action shall be taken against the licensees in the following circumstances :-

Licensees who,

(a) do not keep their shops open throughout the month during the stipulated period;

(b) fail to provide food grains to BPL families strictly at BPL rates and no higher;

(c) keep the ration cards of BPL household with them;

(d) make false entries in the BPL ration cards;

(e) engage in black marketing or siphoning away food grains to the open market and handover such ration shops to such other person/organizations shall make themselves liable for cancellation of their license. The concerned authorities will not show any laxity on the subject.

(ii) The above mentioned order of the Hon'ble Supreme Court shall be applicable also to other goods supplied from a fair price shop.”

The duties and responsibilities of a licensee has been outlined in Section 14 of the Control Order, 2016 and Section 27 deals with cancellation of licence. Section 27 of the Control Order 2016 reads as follows:-

“27. Cancellation of License. - (i) If a licensee violates any provision of this Order or fails to comply duties and responsibilities assigned to the license, his license shall be cancelled by the licensing authority by a written order, and such a cancellation of license shall not affect other actions initiated/initiable under the Essential Commodity Act, 1955

(Central Act 10 of 1955).

(ii) No order of cancellation of a license shall be made until the licensee has been given sufficient opportunity to state his case against the proposal of cancellation of his license.

(iii) The cases of violation of the provisions of this Order shall be disposed of within two months, as far as possible, after coming in cognizance as for.”

Petitioner in his reply to the show cause has given reasons on account of which, there was failure on his part to fully comply responsibilities and duties of a licensee, as envisaged in Section 14 (v) (vi), however, same was not considered and appreciated by the authorities and in a mechanical manner, order of cancellation of licence has been passed. The nature of allegation is not such grave which entails cancellation of licence. There is no allegation by any beneficiaries regarding non-supply of food-grains to them and the allegations are confined to failure in performing some of the duties and responsibilities attached to the licensee.

In such view of the matter, the order passed by the revisional authority as well as appellate authority as well as licensing authority is set aside and the licensing authority is directed to pass a fresh order after giving a copy of inspection report dated 28.8.2016 conducted by Block Supply Officer and opportunity to petitioner to submit his reply to the said inspection report as well as after considering the reply of

petitioner to the show cause dated 6.6.2017 and also taking into the account the gravity of the charges as alleged in the show cause within 30 days from the date of receipt/production of a copy of order passed by this Court.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
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