

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8671 of 2020

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Ramashish Yadav Son of Late Munnar Yadav Resident of Village- Chhaprar,
Post- Milkichak, Police Station- Bahadurpur, District- Darbhanga, presently
PDS Dealer, Panchayat- Pidri, Block- Bahadur, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Civil Supply Department, Government of Bihar, Patna.
2. The Secretary, Food and Civil Supply Department, Government of Bihar, Patna.
3. The Divisional Commissioner, Darbhanga.
4. The District Magistrate, Darbhanga.
5. The District Supply Officer, Darbhanga.
6. The Licensing Authority cum The Sub-Divisional Officer, Sadar, Darbhanga.
7. The Block Supply Officer, Bahadurpur, District- Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pankaj Kumar Jha
For the Respondent/s : Mr. Lalit Kishore (AG)

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL ORDER

3 28-01-2021 Heard learned counsel for the petitioner and learned
counsel for the respondents.

Petitioner is aggrieved by the order dated 17.03.2020,
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, Sadar, Darbhanga 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 license 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 he was not sent to jail as he was granted anticipatory bail by the Court. He had also not gone fugitive. The impugned order nowhere says so. It is submitted that in such circumstances the order contained in Annexure-2 suspending the license 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. It is further submitted that more than 180 days have also expired after passing of the order as contained in Annexure-2 but till date no order could be passed by the Licensing Authority.

Learned counsel for the State has though not filed any counter affidavit but as stated above he has relied on the plea taken in the counter affidavit filed in C.W.J.C. No. 25020 of 2018. In course of argument, however, learned counsel for the



State 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.

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 its 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.

Accordingly, the order dated 17.03.2020 as contained in Memo No. 134 (Annexure-2) is set aside and the writ application stands disposed of. The consequential benefits shall follow.

(Arvind Srivastava, J)

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