

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10817 of 2020

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Abhinandan Yadav S/o Basudev Yadav, Resident of Village-Nadhi, P.S. and District-Madhepura.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Food and Consumer Protection Department, Bihar, Patna.
2. The Divisional Commissioner, Koshi Division, Saharsa.
3. The District Magistrate-cum-Collector, Madhepura.
4. The District Supply Officer, Madhepura.
5. The Additional District Supply Officer, Madhepura.
6. The Sub-Divisional Officer, Madhepura.
7. The Block Supply Officer, Murliganj, Madhepura.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. N.K. Agarwal, Sr. Advocate
		Mr. Dhananjaya Nath Tiwari, Advocate
For the Respondent/s	:	Mr. Arwind Ujjwal, SC-4

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 24-01-2022

This application has been taken up for online hearing through video conference because of COVID-19 pandemic restrictions.

2. The petitioner was granted licence for running a Fair Price Shop under Bihar Trade Articles (Licenses Unification) Order, 1984, read with Bihar Fair Price Shop Order, 2007 ('2007 Order' for short). Alleging certain



irregularities, the petitioner was put to a show cause through letter dated 03.12.2009, asking him to explain as to why his licence No. 163 of 2007 be not suspended/cancelled. The petitioner submitted his response on 10.12.2009.

3. The Licensing Authority, after rejecting the petitioner's explanation put him to second show cause notice asking him to explain as to why his licence be cancelled. In the meanwhile, it was decided to suspend the petitioner's licence by the same order issued by memo No. 02-2 dated 02.01.2010. The petitioner submitted his reply to the second show cause notice on 11.01.2010.

4. The Licencing Authority, after considering the petitioner's reply to the second show cause notice, by an order dated 30.03.2010, cancelled the petitioner's licence. Further, the petitioner's appeal against the order of the Licensing Authority came to be rejected by an order dated 13.12.2013 passed by the District Magistrate, Madhepura.

5. The petitioner approached the Revisional Authority against the order of the Appellate Authority giving rise to Supply Revision Case No. 45 of 2014 which too has been dismissed by an order dated 04.12.2019.

6. Nearly one year after passing of the order of the



Revisional Authority, present writ application has been filed seeking quashing of the orders of the Licensing Authority, the Appellate Authority and the Revisional Authority.

7. Assailing the impugned order, Mr. N.K. Agarwal, learned Senior Counsel appearing on behalf of the petitioner, has submitted that the Licensing Authority had put the petitioner to show cause notice as to why his license be not suspended or cancelled. He has contended that, once after having considered the petitioner's show cause, the Licensing Authority decided to suspend the licence, it should not have subsequently cancelled the petitioner's licence. He also contends that the Licensing Authority could exercise either of the two options but not both. He has also placed reliance on a Division Bench decision of this Court in case the of *Shiv Chandra Jha Vs. Harideo Jha* reported in *2013 (3) PLJR 956*.

8. On careful examination of the facts of the present case, in our considered opinion, the said Division Bench decision in the case *Shiv Chandra Jha* (supra), is not applicable for the reason that in the present case, the petitioner's licence was not suspended by way of punishment. The petitioner was rather put to second show cause notice as to why the licence be not cancelled, while placing the license under suspension.



9. There cannot be any quarrel over the legal position that, once the Licensing Authority decides to suspend the licence by way of punishment under Clause 7 (ii) of 2007 Order, the Licensing Authority could not proceed further to cancel the licence.

10. Paragraphs 21 to 23 of the decision in case of ***Shiv Chandra Jha*** (supra) relied on by Mr. Agarwal are relevant in this context which are reproduced hereinbelow :-

*“21. In our opinion, the power to suspend or cancel the licence conferred by sub-clause (ii) of Clause 7 of the 2007 Order is akin to power to cancel or suspend licence under Sub-clause (1) of Clause 11 of the 1984 Order. The 1984 Order has been subject of consideration by this Court time and again. As early as in 1989 in the matter of **Swami Distributors v. State of Bihar**, (1990 (1) PLJR 210), a Division Bench of this Court had occasion to consider the provision of the 1984 Order. The Bench held that the power of suspension conferred by Clause 11 of the 1984 Order was akin to one under service jurisprudence;*

(i) suspension by way of punishment, and

(ii) suspension pending enquiry and/or contemplated enquiry. The



Court held, “... it provides two kinds of suspension, namely, one under clause 11(1) i.e. suspension by way of punishment, and under clause 11(2), suspension during the pendency or contemplation of a proceeding for cancellation of licence. The second kind of suspension, is an interim suspension with a life of ninety days.” The aforesaid judgment has been followed consistently and has become settled law.

21. In the matter of M/s Sukhwinder Pal Bipan Kumar v. State of Punjab (supra), a similar licensing Order prevalent in the State of Punjab was under consideration by the Hon'ble Supreme Court. The Hon'ble Court upheld the legality of second proviso of sub-clause (1) of Clause 11 of that Order that empowered the licensing authority, **“to suspend a licence without giving a reasonable opportunity to a licensee of stating his case for a period not exceeding 90 days during the pendency or in contemplation of proceeding for cancellation of his licence.”**

22. In the matter of Thakko Choudhary (supra), a Bench of this Court while considering a similar provision under Section 42 of the Bihar and Orissa Excise Act, 1915 held that Section 42 empowers the Collector or the prescribed authority to



cancel or to suspend a licence.

23. Once the authority has decided to suspend the licence by way of punishment under Clause 7(ii) of the 2007 Order, he cannot proceed further to cancel the licence as no one can be punished twice for the same act of misconduct or offence. This construction is fortified by sub-clause (iv) which requires the licensing authority to ask show cause before suspending licence. Sub-clause (v) thereof restricts the power of suspension to a maximum period of 90 days. It may be revoked earlier if the selection committee so recommends.”

11. In the present case, as we have noticed hereinabove, the order of suspension was not by way of punishment but the same was by an interim measure during the period when the petitioner was put to show cause notice for taking action of cancellation of his licence.

12. In such view of the matter, we do not find any force in the aforesaid submissions made by Mr. N.K. Agarwal, learned Senior Counsel appearing on behalf of the petitioner.

13. We note here that the petitioner has not been able to make out any case of procedural infirmity in the decision making process. No case of violation of principles of natural



justice is made out.

14. We have carefully seen the orders passed by the Licensing Authority, the Appellate Authority and the Revisional Authority which are reasoned and speaking. The said orders have taken into account the points taken by the petitioner before them. The allegation against the petitioner was of black-marketing, which was found to be proved by the authorities.

15. In such situation, in exercise of power of Judicial Review under Article 226 of the Constitution of India, in our view, no case for interference is made out. This application is accordingly dismissed, being devoid of merit.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

K.K.RAO/-

AFR/NAFR	NAFR
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