

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15267 of 2021

=====

Parvati Kumari Wife of Sharvan Kumar Yadav Resident of Village-
Agargaraha P.S.-Marauna, District-Supaul.

... .. Petitioner

Versus

1. The State of Bihar Bihar
2. The District Magistrate, Supaul,
3. The District Supply Officer Supaul.
4. The Assistant District Supply officer Nirmali, Distt.-Supaul.
5. The Sub-Division Officer Nirmali, Distt.-Supaul,
6. The Block Supply Officer Marauna, P.S.-Marauna, District-Supaul.
7. The Secretary, Food and Civil Supplies Department, Government of Bihar.

... .. Respondents

=====

Appearance :

For the Petitioner/s : Mr. Hriday Narayan Harshit, Advocate
For the Respondent/s : Mr. S. Raza Ahmad (AAG-5)

=====

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

4 29-04-2022 An order passed by the Sub-Divisional Officer, Nirmali-cum-Licencing Authority under Bihar Targeted Public Distribution System (Control) Order, 2016 ('Control Order' for short) dated 28.03.2020, whereby in exercise of power under Clause 28 of the said Control Order, the petitioner's licence to run a Fair Price Shop has been suspended on the basis of lodging of an F.I.R. against her, is under challenge in the present writ application. The impugned order reads as under:-



"प्रखंड आपूर्ति पदाधिकारी, मरौना ने अपने पत्रांक – 22 दिनांक 26.03 2022 के द्वारा प्रतिवेदित किये है की ज 0 वि0 प्र 0 बिक्रेता श्रीमती पार्वती कुमारी, अनुज्ञप्ति सं0 -41 / 18 , पंचायत-मरौना उत्तर, प्रखंड-मरौना के विरुद्ध आवश्यक वास्तु अधिनियम के तहत मरौना थाना में प्राथमिक दर्ज की गई है, जिसका थाना कांड संख्या-41 /2020 है।

अतः आवश्यक वास्तु अधिनियम के तहत प्राथमिक दर्ज होने का कारन श्रीमती पार्वती कुमारी, अनुज्ञप्ति सं0 -41 / 18 पंचायत-मरौना उत्तर, प्रखंड-मरौना की अनुज्ञप्ति तत्काल प्रभाव से निलम्बित किया जाता है।

इसकी सूचना सभी संबंधितों को दी जाय।"

Clause 28 of the Control Order reads as under:-

"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."

It can be easily inferred from the language of Clause 28 of the Control Order, 2016, as quoted hereinabove, that in the event of registration of an F.I.R. against a licensee under the Essential Commodities Act, 1955, the licence may be suspended by the Licencing Authority under the following two



circumstances:-

- (i) If the licensee is sent to jail, or
- (ii) If he/she goes fugitive.

The impugned order, however, does not disclose as to whether the petitioner was either arrested or she had gone fugitive upon registration of the F.I.R.. The F.I.R. was registered on 26.03.2020, which is an admitted fact and the impugned order came to be passed soon thereafter on 28.03.2020. The only reason for suspending the petitioner's licence, as disclosed in the impugned order, is her implication in the said criminal case.

In the counter affidavit filed on behalf of the State of Bihar also, it has been stated that petitioner's implication in the criminal case is the reason for issuance of the impugned order. It is not the case of the State-respondents that it was because of the petitioner having been arrested or going fugitive after lodging of the F.I.R. that the action of suspending the licence was taken.

It is to be noted that the petitioner has brought on record a final report submitted by the police under Section 173 of the Cr.P.C., in which, though the case has been found to be true, but without clue as regards accusation against the petitioner. Learned counsel for the petitioner has, however, not been able to inform this Court as to whether any order has been



passed by the Court in seisin of the matter on the said final police report or not.

Be that as it may, we are of the considered view that the impugned order dated 28.03.2020 is manifestly illegal, inasmuch as, it does not disclose either the petitioner's arrest or she going fugitive after registration of F.I.R., as the reason for suspending the licence, either of which is the condition precedent for exercise of power of suspension of licence under Clause 28 of the Control Order.

We are of the considered view that if the Licencing Authority under the Control Order decides to suspend a licence in exercise of power under Clause 28 of the Control Order on the basis of registration of F.I.R., he is under obligation to disclose in the impugned order, the reason for suspension of licence, i.e. (i) either the petitioner has been arrested, (ii) or he/she has gone fugitive.

In such view of the matter, since the impugned order dated 28.03.2020 doesn't disclose essential ingredients for exercise of power under clause 28 of the Control order, the same is unsustainable and is accordingly quashed. This application is allowed. The consequences of quashing of the impugned order shall follow forthwith.



In the facts and circumstances of the present case, and for future guidance, we have considered it appropriate to direct impleadment of the Secretary, Bihar State Food & Civil Supplies Department, Government of Bihar as party respondent No. 7, to be carried out by the Registry. Let a copy of the present order be communicated to the Secretary, Bihar State Food & Civil Supplies Department, Government of Bihar forthwith.

The Secretary, Department of Food and Civil Supplies, Government of Bihar (respondent No. 7) is directed to get the present order circulated among all concerned officials so as to ensure that the Competent Authority/Licencing Authority adhere to the provision under Clause 28 of the Control Order while placing any licence under suspension in exercise of power under the said provision.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

K.K.RAO/-

U			
---	--	--	--

