

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10417 of 2013

Subhas Rai, Son of Late, Gaujja Rai, resident of Mohalla – Betwan
Bazar, P.S.- Kashim Bazar, District – Munger.

... .. Petitioner/s

Versus

1. The State Of Bihar, through Department of Food and Civil Supply,
the Government of Bihar, Patna.
2. The District Magistrate, Munger.
3. The Sub-Divisional Officer, Sadar, Munger.
4. Marketing Officer, Town Area, Munger.

... .. Respondent/s

Appearance :

For the Petitioner/s : Ms. Sushmita Mishra
For the Respondent/s : Mr. Rajesh Singh

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

5 18-08-2022 Heard Ms. Sushmita Mishra, the learned

Advocate for the petitioner and the learned counsel for the

State.

2. The license of the petitioner, which was



obtained under the Public Distribution System (Control) Order, 2001 (in short “the Control Order of 2001) was suspended on the ground of the petitioner having been made accused in a case involving breach of Essential Commodities Act, 1955; notwithstanding the fact that there was no provision for suspension of license in the earlier Control Order of 2001. Nevertheless, when the petitioner challenged the aforesaid order before this Court, he was asked to prefer an appeal against the order of cancellation of his license. Later, finding that there was no provision of appeal against the order of suspension of license, a review application was filed which was allowed, reviving the main petition.

3. In the aforementioned background, Ms. Mishra, learned Advocate has submitted that the order dated 05.10.2010 passed by the Sub-Divisional Officer, Munger be quashed as no notice was issued to the petitioner to explain his cause and the criminal case which was lodged against him remained pending without any substantial progress.

4. As ill luck would have it, there came a sea-change in the new Bihar Targeted Public Distribution System (Control) Order, 2016 (in short “the Control Order of 2016), in which there is a provision for suspension of license in the



event of a licensee being made an accused in a criminal case but only when he is untraceable or goes to jail. In that event, the provision of Control Order of 2016 mandates that a notice is required to be served upon the licensee to explain his cause and a final order has to be passed within a period of 180 days as far as possible.

5. The learned counsel for the petitioner submits that with the suspension of the license of the petitioner continuing for all this while, the petitioner could not make use of the provisions of new Control Order of 2016 for renewal of license. Unless the license would have been restored, no effort could have been made by the petitioner to have it renewed under the new Control Order of 2016. It has also been urged on behalf of the petitioner that there was an amendment carried out in the Control Order of 2001 in the year 2011, whereby the provision contained in Clause 7(III) was deleted. With such deletion of the provision contained in clause -7 of the Control Order of 2001, the suspension of the license of the petitioner ought to have been revoked unilaterally and a final order should have been passed depending upon the outcome of the criminal case.

6. Ms. Mishra, the learned Advocate has also



drawn the attention of this Court to the fact that under Section 34 of the Control Order of 2016, any proceeding initiated under the earlier Control Order has been saved and it has been provided in clause 2 of Section -34 that notwithstanding the repeal of the Control Order of 2001, anything done or any action taken under the earlier notification would be deemed to have been done or taken under this order as if it had been in force at that time. Clause – 3 of Section 34 of the Control Order of 2016 further specifies that all cases against a fair price shop licensee pending at the time of the commencement of the order shall be dealt with in accordance with the provisions of the order under which the cases were initiated.

7. After having said that, it would also be necessary to refer to the provision contained in Clause 4 of the Control Order of 2016, which says that before the commencement of the Control Order of 2016, all circulars, orders and directions under the Public Distribution System with respect to license, licensing process, fee, renewal fee, suspension and cancellation etc., shall be deemed to have been repealed but notwithstanding such repeal, any investigation or legal proceedings or remedy could be instituted, continued or enforced and penalty, forfeiture or



punishment could be imposed as if the said orders have not been repealed.

8. Taking clue from the aforesaid provisions contained in Section 34 (IV), this Court, for wholesome justice and taking action *ex debito justitiae*, is of the view that the proceeding initiated against the petitioner ought to be concluded forthwith. Notwithstanding the fact that there has been an inexplicable efflux of time since the license of the petitioner was suspended, this Court directs the Licensing Authority to issue a show-cause notice to him to explain his cause within a period of 30 days and after eliciting the response of the petitioner, take a final decision in the matter. This court is cognizant of the fact that the criminal case against the petitioner is still continuing. For the expeditious conclusion of which, no order could be passed in the present petition and the petitioner would, for that relief, be required to agitate before the appropriate forum.

9. Under the Control Order of 2016, which is in currency today, the fall-out of the final outcome of the criminal case has been spelt out. Before the afore-noted provision could be made use of by the petitioner, the petitioner would be required to have his license renewed



under the new Act provided under the old Control Order, the license of the petitioner stands restored.

10. It is precisely for this reason that this Court has directed the Licensing Authority to look into the entire aspect of the matter and taking into account the provision contained in Section 34 (IV), pass a final order with respect to the correctness of the order suspending the license of the petitioner even though for the inaction of the respondents, no final decision could be taken and the criminal case also could not be concluded.

11. In case the suspension of the license of the petitioner under the old Control Order is done away with, it would be open for the authorities to consider the claim of the petitioner for any renewal even though it stands hopelessly time barred now, but for which the petitioner alone cannot be blamed. This observation of ours comes in the wake of the submission made on behalf of the petitioner that the vacant shop of the petitioner has still not be advertised and the beneficiaries who were hitherto tagged with the petitioner's shop remain tagged with the Public Distribution Shop of another licensee.

12. It is expected that a final decision shall be



taken by the authorities within a period of 90 days in all.

13. With the aforesaid direction / observation,
the petition stands disposed of.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

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