

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21179 of 2021

Ashok Kumar Sharma Son of Kamal Kant Sharma Resident of Village - Asha Tol, P.O. - Paharpur, P.S. - Bhawanipur, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Food and Civil Supply Department, Govt. of Bihar, Patna.
2. The Principle Secretary, Food and Civil Supply Department, Govt. of Bihar, Patna.
3. The Director, Food and Civil Supply Department, Govt. of Bihar, Patna.
4. The Collector - Cum- District Magistrate, Bhagalpur, District - Bhagalpur.
5. The Sub Divisional Officer, Naugachia, District- Bhagalpur.
6. The Block Supply Officer, Narayanpur, District- Bhagalpur.
7. The Incharge Supply Inspector, Narayanpur, District- Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sharda Nand Mishra, Advocate
For the Respondent/s : Mr. Anisul Haque, AC to AAG 5

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 22-02-2022

Heard Mr. Sharda Nand Mishra, learned Advocate for the petitioner and Mr. Anisul Haque for the State.

The petitioner has challenged the order dated 09.03.2021 contained in Memo No. 184 passed by the Sub-Divisional Officer, Naugachia/Licensing Authority, whereby the licence of the petitioner has been cancelled.

The licence of the petitioner was initially suspended after the institution of FIR under the E.C. Act



against him. The petitioner, thereafter was noticed and his licence was suspended.

The impugned order depicts that the licence has been cancelled primarily on the ground that the case pursuant to the aforesaid FIR is still pending consideration before a competent court of law and that the explanation offered by the petitioner was not satisfactory.

We find that the order does not contain any reason for coming to that conclusion.

The pendency of a criminal case cannot be a ground for cancellation of licence, as special provision has been made for such cancellation under the Bihar Targeted PDS (Control) Order, 2016.

Section 28 of the Bihar Targeted PDS (Control) Order, 2016 specifies that if an FIR is lodged against a licensee under the E.C. Act, 1955 or for any other criminal case or the licensee is sent to jail or he goes fugitive, his licence shall be suspended by the licensing authority with immediate effect and after serving show-cause notice to him in accordance with the provisions of the Civil Procedure Code and after giving him sufficient opportunity to present his case, an action would be taken within 180 days, as far as possible.

The outer limit of 180 days has been given so that the licence does not remain under animated



suspension for a long time. It is one of the requirements under the Bihar Targeted PDS (Control) Order, 2016 that the PDS shop in a locality ought not to be kept vacant and the process of filling such vacant shops has to be a continuous one.

The consequences of conviction in a criminal case have also been specifically dealt with under Rule 29 of the Bihar Targeted PDS (Control) Order, 2016.

Thus, we find that the appellate authority has misdirected himself in holding that the pendency of the criminal case against a licensee, would *ipso-facto* lead to the cancellation of licence.

Apart from this, we find that no reason has been ascribed for not accepting the explanation offered by the petitioner.

The order, therefore, does not appear to be sustainable to us.

For the reasons aforestated, the impugned order is set aside.

The matter is remitted to the appellate authority for writing out a fresh order in accordance with law after giving reasonable opportunity to the petitioner to represent his cause. The appellate authority shall decide the case within a period of 60 days of the date of receipt/production of a copy of this order.



The writ petition stands allowed to the extent indicated above.

(Ashutosh Kumar, J)

(Anjani Kumar Sharan, J)

krishna/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.02.2022
Transmission Date	NA

