

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4516 of 2023

Amir Prasad son of Dahu Gop, Resident of Village-Kaji Vigha, P.O.-Rasisa,
P.S.-Bele, Islampur, District-Nalanda, Bihar-801303 ... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
2. The District Magistrate, Nalanda.
3. The Additional District Supply Officer, Nalanda.
4. The Sub-Divisional Officer cum Licensing Officer, Hilsa, Nalanda.
5. The Block Supply Officer, Islampur, Nalanda ... Respondents

Appearance :

For the Petitioner : Mr. Anand Kumar Ojha, Adv.
For the Respondents : Mr. Arvind Ujjwal, SC IV

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

10 31-10-2023

Heard the learned counsel for the parties.

2. The present writ petition has been filed for the following relief(s) :

“..... for quashing of the Appellate Order dated 19.11.2022 passed by the Respondent No. 3 in Appeal Case No. 12/2021 whereby and whereunder the Appellate Authority has illegally dismissed the Appeal without deciding the core issue based on facts hence the said authority abdicated its jurisdiction, violated the order passed by this Hon'ble Court dated 22.09.2021 in C.W.J.C. No. 14272/2021. The Petitioner prays for restoration of its PDS license and the alleged inspection dated 29.05.2021 itself had been found to be contrary to the provision existing on 29.05.2021 namely the timing of shop operation till 1.00 PM when as the shop was allegedly inspected on 29.05.2021 at 2.05 PM. The Petitioner prays for declaration that since inspection itself was invalid/suspicious all statement of the Consumers purportedly made during inspection had no value particularly when all originate from the said inspection.”



3. Learned counsel appearing on behalf of the petitioner has stated that the order impugned in the present Writ Petition is liable to be set aside on the ground that the same is passed contrary to the provisions of the Bihar Targeted Public Distribution System (Control) Order, 2016 (hereinafter referred to as, 'the Control Order, 2016') and also the facts of the case. Learned counsel has stated that as per Rule 25(i)(a) of the Control Order, 2016, the licensee is obligated to keep the shop open throughout the month during the stipulated period. That as per Rule 15 of the Control Order, 2016, the shop should be kept open from 07.00 a.m. to 01.00 p.m. from March till August and from 08.00 a.m. to 02.00 p.m. from September to February. Learned counsel has stated that the authority concerned has inspected the shop on 29.05.2021 at 02.05 p.m. and having found the shop closed has issued the show cause notice. Even though the petitioner has given a suitable reply, the same was not considered and order of cancellation was passed by the Sub Divisional Officer-cum-Licensing Officer, Hilsa, Nalanda, (Respondent No. 4) in a mechanical manner. The learned counsel has stated that even though the petitioner has filed an appeal aggrieved by the order of cancellation, the Appellate Authority, has not considered the grounds and rejected the



appeal confirming the order of cancellation passed by the Respondent No. 4. Learned counsel has stated that as per Rule 15 of the Control Order, 2016, the petitioner is obligated to keep the shop open from 07.00 a.m. to 01.00 p.m. only whereas the inspection took place at 02.05 p.m., That the shop of the petitioner was closed at 02.00 p.m. and the petitioner cannot be blamed for keeping the shop closed after the stipulated period, therefore, learned counsel has prayed this Hon'ble Court to allow the present Writ Petition by set aside the impugned order.

4. Per contra, the learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the present Writ Petition and stated that the petitioner has an alternative and effective remedy of filing a revision under the Control Order, 2016. Learned counsel has stated that at the time of inspection the shop was closed and as per the guidelines which have been issued by the Government on 15.06.2021 vide Memo No. 3164 the petitioner was obligated to keep the shop open from 06.00 a.m. till 06.00 p.m. in the evening. That the authority concerned duly taking into consideration that the petitioner has not kept the shop open has taken necessary action strictly in accordance with law. Learned counsel has, therefore, prayed this Hon'ble Court to dismiss the



present Writ Petition.

5. In order to resolve the issue in the present Writ Petition it is necessary to extract the provisions of the Act of the Bihar Targeted Public Distribution System (Control) Order, 2016, i.e., more particularly Rules 15 and 25(i)(a) of the Order, which are stated as follows :

“15 : Working and Leave :-- (i) *A shop of public distribution system shall be kept open every day in a week from 7.00 am to 1.00 pm from March to August and from 8.00 am to 2.00 pm from September to February.*

(ii) *If a fair price shop owner is unable to operate the shop due to unavoidable reasons for a limited period, he shall submit an application to the licensing authority. The licensing authority may give him permission to go in leave after making optional arrangement for supply of essential commodities to the consumers related to his shop. The maximum period of leave shall be of 90 days at a time.”*

“25. Action against a licensee. - (i) *In view of the order passed by the Hon'ble Supreme Court in Civil Writ196/01, action shall be taken against the licensees in the following circumstances :-*

Licensees who,

(a) *do not keep their shops open throughout the month during the stipulated period;*

.....
.....”

6. A perusal of the above Rules clearly stipulate that the petitioner is obligated to keep the shop open from 07.00 a.m. till 01.00 p.m. from March till August and from 08.00 a.m. to 02.200 p.m. from September to February. Admittedly, in the



present case the inspection of the shop has taken place on 29.05.2021 at 02.05 p.m., i.e., after the stipulated time. That there was no legal obligation on behalf of the petitioner to keep the shop open after the stipulated time, i.e., after 01.00 p.m., even otherwise also the license of the petitioner cannot be cancelled on such trivial grounds. Even though in the counter affidavit filed by the respondents a ground is taken that as per the Notification issued by the Government on 15.06.2021 the petitioner was obligated to keep the shop open from 06.00 a.m. to 06.00 p.m. It is to be noticed that the said Notification has been issued after the date of inspection, therefore, the said Notification cannot have any application to the facts of the present case. At the most the said Notification is prospective in nature and cannot be applied retrospectively. There is no violation of the Control Order as alleged against the petitioner and the petitioner has maintained the timing as stipulated under Rule 15 of the Control Order, 2016.

7. A perusal of the order of the Sub Divisional Officer-cum-Licensing Officer, Hilsa, Nalanda, (Respondent No. 4) as well as the Appellate Authority shows that the authorities have not taken into consideration the provisions of Rule 15 of the Control Order, 2016, and have dealt the case in a



mechanical manner. Even though the petitioner has taken a specific ground the same was not considered by the authorities. Once it is held that the petitioner's shop was closed as per the stipulated times, the other allegations made against the petitioner fail into insignificance and cannot be a ground for cancelling the license.

8. Having regard to the above the impugned orders are **set aside** and the authorities are directed to restore the license of the petitioner forthwith and the petitioner shall be permitted to resume the supplies.

9. With the above directions, the Writ Petition stands **allowed** to the extent indicated.

(A. Abhishek Reddy , J)

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