

(2019) 12 PAT CK 0166

In the Patna High Court

Case No : Letters Patent Appeal No. 670 Of 2019 In Civil Writ Jurisdiction Case
No. 2521 Of 2019

Abdur Rahman

APPELLANT

Vs

State Of Bihar Through And Ors

RESPONDENT

Date of Decision : 05-12-2019

Acts Referred:

Constitution Of India, 1950 — Article 226
Essential Commodities Act, 1955 — Section 7

Citation : (2019) 12 PAT CK 0166

Hon'ble Judges : Ashwani Kumar Singh, J;Prakash Chandra Jaiswal, J

Bench : Division Bench

Advocate : Alok Ranjan, Rajeev Ranjan, S. Raza Ahmad, Anisul Haque

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the appellant and learned counsel for the State.

2 This appeal under clause 10 of the Letters Patent has been filed by the appellant challenging the order dated 30.04.2019 passed by the learned Single Judge in CWJC No.2521 of 2019 whereby the writ petition filed by the appellant challenging the order dated 22.11.2012 issued and passed by the Sub-Divisional Officer, Baishi whereby his licence to run fair price shop under the Public Distribution System (for short 'PDS') was cancelled has been dismissed.

3. The brief facts of the case are that the appellant was granted licence to run a fair price shop at Ward No.09, Village-Chopra, Tola-Boulam, Block-Baisa, District-Purnea vide Licence No.17/07 under Bihar Trade Articles (Licences Unification) Order, 1984. A criminal case was registered against him vide Rouda P.S. Case No.16 of 2012 under Section 7 of the Essential Commodities Act on 13.03.2012 on the ground that he was involved in black marketing of wheat and rice allotted to his shop for distribution amongst the beneficiaries of BPL category attached to his fair price shop. Subsequently, a show-cause notice was issued to him seeking explanation as to why the licence granted to him be not cancelled. The appellant

failed to respond to the show- cause notice issued against him. Thereafter, the Sub-Divisional Officer vide order dated 22.11.2012 cancelled his licence. The appellant did not prefer any appeal against the order of cancellation of licence. More than six years after cancellation of licence, the appellant challenged the order dated 22.11.2012 passed by the Sub-Divisional Officer cancelling his licence by way of filing a writ petition before this Court vide CWJC No.2521 of 2019.

4. Learned Single Judge having considered the submissions made at the Bar, vide impugned judgment dated 30.04.2019, dismissed the writ petition on the ground of delay and laches.

5. Assailing the impugned order passed by the learned Single Judge, learned counsel appearing for the appellant submitted that the learned Single Judge failed to appreciate that the appellant was not sitting tight over the matter rather he was pursuing his remedy before the authorities between the period 22.11.2012 and the filing of the writ petition. He contended that the appellant has a very good case on merit and, hence, the learned Single Judge ought to have allowed the writ petition as no opportunity of hearing was accorded to the appellant before cancellation of his licence.

6. Per contra, learned counsel appearing for the State has vehemently opposed the submissions made by the learned counsel for the appellant. He has contended that there is no error in the impugned judgment passed by the learned Single Judge. Learned Single Judge has rightly held in his order that in spite of a show-cause notice issued to the appellant, he failed to respond to it. He has contended that the appellant did not avail of the remedy of appeal, which was available to him within 30 days from the date of passing of the order of cancellation of licence. He has also contended that at no point of time, the appellant pursued the matter before the respondent authorities and the submission made in this regard is absolutely false.

7. We have heard the parties and perused the record. Clause 11(1) of the Unification Order provides for suspension and cancellation of license. It reads as under :-

"11. Suspension and cancellation of licence. - (1) If any licensee or his agent or servant or any other person acting on his behalf contravenes any of the terms and conditions of the licence, then without prejudice to any other action that may be taken against him under the Essential Commodities Act, 1955 (Central Act, 10 of 1955) his licence may be cancelled or suspended with regard to one or more trade articles by an order in writing of the Licensing Authority and an entry will be made in his licence relating to such suspension or cancellation."

8. Clause 28 of the Unification Order provides for appeal. It reads as under :-

"28. Appeal - (1) Any person aggrieved by an order made by any Officer under this Order may-

(a) if the order is made by any officer lower in rank than the Collector appeal to the Collector; and

(b) if the order is made by the Collector appeal to the Commissioner;

(2) No such appeal shall be entertained if not preferred within 30 days from the date of receipt of the order appealed against by the appellant;

(3) No order which adversely affects any person shall be passed under this clause unless such person has been given a reasonable opportunity of being heard;

(4) Pending disposal of the appeal, the appellate authority may direct that the order against which the appeal is made shall not take effect until the appeal is disposed of."

9. Further Clause 29 provides for revision before the Commissioner, suo motu or on an application under the provisions of the unification and he may call for the record of any case decided by the Collector or the Licensing Authority and he may pass such order as he thinks fit.

10. The appellant, admittedly, did not avail of the equally efficacious statutory remedy of appeal and revision within time. He has assailed the order in writ jurisdiction after an inordinate delay of over six years.

11. By now it is well settled that the power to issue an appropriate writ under Article 226 of the Constitution is discretionary and in exercise of its discretion, the High Court does not assist the tardy and the indolent or the acquiescent and the lethargic.

12. If there is an inordinate and unexplained delay on the part of petitioner in filing a writ petition, the High Court may decline to grant relief in exercise of its writ jurisdiction. In the case in hand, the writ petitioner has no plausible explanation for not exhausting the statutory remedy of appeal in time as also for not approaching the writ court in time. Hence, in our opinion, the writ court rightly dismissed the writ petition.

13. The appeal, being devoid of any merit, is dismissed.