

(2013) 11 PAT CK 0051

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7932 of 2013

Abdur Rajjaque

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 01-11-2013

Acts Referred:

Citation : AIR 2014 Patna 1

Hon'ble Judges : Jayanandan Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Jayanandan Singh, J.—Petitioner is a retail fertilizer dealer registered under Fertilizer (Control) Order, 1985 (In short, "Control Order"). On 13.11.2012 on some confidential information, one godown situated on the land of one Md. Rabid was inspected by the respondents. In the godown 759 bags of fertilizer were found manufactured by Tishta Agro Industry Limited, West Bengal. The said industry was not registered with the Bihar Government and its products were banned from sale in the State. Hence it was suspected that the fertilizer bags had been smuggled in the State for the purposes of black-marketing. Information had been received that the godown was hired by petitioner. However, at the time of raid and search, petitioner fled away from the spot. The fertilizer was seized and entrusted to one Parmanand Sah under entrustment undertaking. Since smuggling of banned fertilizer and attempt of its black-marketing in the State constitute an offence, an F.I.R. was registered on the same day with the local police against the petitioner u/s 7 of the Essential Commodities Act. Thereafter a show-cause notice was issued to the petitioner on 26.11.2012 by the District Agriculture Officer, Araria, vide Annexure-4, calling upon him to show-cause as to why his licence may not be cancelled. Petitioner filed his reply on 29.11.2012, vide Annexure-5. However, by the impugned order dated 30.11.2012, as contained in Annexure-1, licence of the petitioner was suspended. This order of suspension of licence is under challenge in this writ application. Submissions of

the learned senior counsel for the petitioner were two fold, namely, first that since no final order had been passed within 15 days of the order of suspension, the suspension order stood revoked by operation of law in terms of second proviso to sub-clause (2) of Clause 31 of the Control Order, 1985 and secondly, that the order of suspension of licence was in the wake of the F.I.R. instituted against the petitioner, for which there was no provision in the Control Order. He also submitted that since suspension order stood revoked by operation of law, this Court is required to give only a declaration that licence of the petitioner stands revived. In the circumstances, petitioner was not required to approach the Appellate Authority as constituted in terms of the Control Order. In support of this submission, he placed reliance on a Division Bench order of this Court in the case of Messrs S.R. Fertilizer and Chemicals Private Limited and Another Vs. The State of Bihar and another, . He also submitted that there was denial of Principles of Natural Justice in the matter as after the suspension of licence, no opportunity was given to the petitioner to file his reply. In support of this submission, he placed reliance on the celebrated judgment of the Apex Court in the case of S.L. Kapoor Vs. Jagmohan and Others, . He also submitted that since earlier show-cause notice was issued to petitioner against proposed cancellation of licence, the order of suspension of licence was bad in law as in I the show-cause it was not indicated that the I order could also be passed for suspension of licence. In support of this submission, he placed reliance on an order of this Court in the case of Bhola Prasad Yadav v. the State of Bihar [2010(3) PLJR 825].

2. A counter affidavit has been filed in this case by the respondents in which it is stated that the manufacturer, namely, Tista Agro Industry Limited, West Bengal, was not registered in the State and therefore, its fertilizer was smuggled in the State for black-marketing in violation of the provisions of the Control Order. It is also stated that the godown was hired by petitioner for storing the fertilizer. Hence, action has been taken against him in accordance with law. It is also stated that action has been taken against the petitioner in terms of sub-clause (1) of Clause 31 of the Control Order and not in terms of sub-clause (2) of Clause 31 thereof. It is also stated that petitioner has remedy by way of appeal in terms of Clause 32A of the Control Order and hence, the writ application is misconceived.

3. A substantive criminal case has been instituted against the petitioner which will take its own course. Therefore, this Court need not go into the facts of the case which have to be considered in the criminal case against him by the trial court.

4. Learned senior counsel for the petitioner has not raised any question of fact in the case. His main attack to the impugned order of suspension of licence of the petitioner was on the ground that it was issued in terms of sub-clause (2) of Clause 31 of the Control Order, and therefore, no final order having been passed, the same died its natural death after 15 days in terms of the second proviso.

5. Since the applicability of sub-clause (2) of Clause 31 is directly in issue in the

case, it is appropriate to reproduce the same here in this judgment itself:--

(2) Where the contravention alleged to have been committed by a person is such as would, on being proved, justify his debarment from carrying on the business of selling of fertilizer or, cancellation of authorization letter or certificate of registration or certificate of manufacture or any other certificate granted under this Order to such person the Notified Authority or registering authority or, as the case may be, the Controller may, without any notice, suspend such certificate, authorization letter, as an interim measure:

Provided that the registering, Notified Authority or, as the case may be, the controller shall immediately furnish to the affected person details and the nature of contravention alleged to have been committed by such person and, after giving him an opportunity of being heard, pass final orders either revoking the order of suspension or debarment within fifteen days from the date of issue of the order of suspension:

Provided further that where no final order is passed within the period as specified above, the order of interim suspension shall be deemed to have been revoked without prejudice, however, to any further action which the registering authority, Notified Authority or, as the case may be, the controller may take against the affected person under sub-clause (2).

6. This sub-clause (2) read with the two provisos makes it clear that whenever a contravention is found to have been committed by a person to be such which could justify debarment from carrying on the business of selling of fertilizer or cancellation of authorization letter or certificate of registration or certificate of manufacture or any other certificate, authorized authority or registering authority or the controller, without any notice, may suspend such certificate of licence as an interim measure. The first proviso lays down that the concerned authority shall immediately furnish to the person details and nature of contravention and, after giving him an opportunity of being heard, pass final orders either revoking the order of suspension or debarment, within 15 days from the date of issue of the order of suspension. The second proviso fixes a time limit of 15 days for passing final order failing which the interim order has to automatically stand revoked without prejudice, to any further action. Thus, in a nutshell, the sub-clause (2) provides for suspension of licence as an interim measure without any notice with service of details and the nature of contravention and passing of final order within 15 days, failing which the order of suspension has to cease to be operative. However, sub-clause (1) of Clause 31 of the Control Order contains some different provisions. This sub-clause reads as follows:--

(1) A Notified Authority, registering authority, or as the case may be, the Controller may, after giving the authorized dealer or the holder of certificate of registration or certificate of manufacture or any other certificate granted under this Order, an opportunity of being heard, suspend such authorization letter or certificate or debar the dealer from carrying on the business of fertilizer on one

or more of the following grounds, namely:--

(a) that the authorization letter or certificate of registration or certificate of manufacture, as the case may be, has been obtained by willful suppression of material facts or by misrepresentation of relevant particulars; (b) that any of the provisions of this Order or any terms and condition of the Memorandum of Intimation or certificate of registration or the certificate of manufacture, as the case may be, has been contravened or not fulfilled;

Provided that while debarring from carrying on the business of fertilizer or cancelling the certificate, the dealer or the certificate holder thereof may be allowed for a period of thirty days to dispose of the balance stock of fertilizers, if any, held by him;...

7. A bare reading of this sub-clause (1) of Clause 31 shows that it does not provide for suspension of certificate immediately. It provides for an opportunity of being heard and then for suspension of such authorization letter or certificate or debarment from carrying on the business of fertilizer on either of the two grounds mentioned in the sub-clause. The judgment of the Division Bench in the case of S.R. Fertilizers & Chemicals Private Limited (*supra*) does acknowledge that suspension under the Bihar Trade Articles (Licences Unification) Order, 1984 may be of two types, namely, one by way of punishment and other pending contemplated enquiry. It is clear that suspension contemplated in sub-clause (1) of Clause 31 of the Control Order is in the form of punishment whereas suspension of certificate or authorization letter contemplated in sub-clause (2) is in the wake of enquiry or contemplated enquiry. In the first proviso of sub-clause (2), action after the said suspension has been laid down which contemplates service of details and the nature of contravention, opportunity of hearing and the final orders of revoking the order of suspension or debarment order within 15 days from the date of issue of the order of suspension. The second proviso provides for automatic cessation of suspension order after 15 days if no final order is passed. On the other hand sub-clause (1) is clearly an action of punishment of suspension or debarment of a dealer from carrying on the business of fertilizer after giving opportunity of hearing. The words "to any holder of certificate of registration or any other certificate granted under the Order" used in sub-clause (1) obviously makes it applicable in the case of a retail dealer also holding a certificate of appointment as retail dealer for carrying on the business of fertilizer. Thus, it is clear that the sub-clause (2) is for immediate action against a dealer having any certificate under the Control Order, whereas sub-clause (1) is for punishment, after issuing notice and an opportunity of hearing to a person holding any type of certificate under this Order.

8. In the present case, raid and search was held on 13.11.2012, the first information report was instituted on the same very day and thereafter notice was issued to the petitioner 26.11.2012, vide Annexure-4. Petitioner replied to the notice on 29.11.2012 and suspension order was passed after considering the same on the next day. Thus, sequence of events shows that the District

Agriculture Officer took action against the petitioner in terms of sub-clause (1) of Clause 31 and not in terms of sub-clause (2) thereof. Hence, this Court is of the opinion that order of the Division Bench in the case of S.R. Fertilizers & Chemicals Private Limited and Anr. (supra) and the order of the learned single Judge in the case of Bhola Prasad Yadav (supra) are not applicable in the case of the petitioner. It may be pointed out that in the counter affidavit it has been stated that petitioner was given an opportunity of hearing but he did not avail it.

9. From bare reading of the show-cause and the impugned order, it is clear that submission of the learned senior counsel for the petitioner that they have been issued solely on account of the first information report instituted against petitioner is not correct. To make things clear, second and third paragraph of the show-cause notice, as contained in Annexure-4, is being reproduced hereinbelow:--

(Vernacular matter omitted.....Ed.)

10. The impugned order also shows that show-cause of the petitioner was considered by the District Agriculture Officer and his bald denial that the fertilizer did not belong to him was not found acceptable in view of the seizure of the fertilizer in presence of the witnesses said to be belonging to the firm of the petitioner. The impugned order shows that the show-cause had been issued to the petitioner in view of the seizure of banned fertilizer from the godown said to be belonging to the petitioner and hence, this part of action of the authority was independent and dehors the fact of institution of the F.I.R. This Court finds that the authority had taken care to issue notice to the petitioner to which he had responded and his reply was considered before passing the order of punishment of suspension of licence. Therefore, in the facts and circumstances of the case, this Court finds that requirement of Principles of Natural Justice stands complied with. It may be pointed out that it is stated in the counter affidavit that petitioner was given an opportunity of hearing but he did not avail it. From his reply to the show-cause notice it does not appear that petitioner expressed any desire to be heard in the matter. The only defence in this respect was that the fertilizer did not belong to him and that the farmers of the area had purchased the fertilizer and had kept in the godown and he did not know as to whether the said Company of Calcutta was registered with the State Government or not, which defence of the petitioner was not found satisfactory.

11. Learned counsel for the petitioner may be right that in case show-cause notice against contemplated suspension of licence was issued, graver punishment of cancellation of licence cannot be passed by the authorities. This proposition, emanating from the order of the learned single Judge in the case of Bhola Prasad Yadav (supra), is correct. However, in the present case, situation is otherwise. The notice was issued to the petitioner against proposed cancellation of licence but he was awarded lesser punishment of suspension of licence. Hence, this Court is of the opinion that the impugned order of suspension of licence cannot be held bad only on account of the fact that the notice was issued to the

petitioner with mention of the proposed cancellation of licence. Apart from above, this Court finds that the I petitioner has alternative remedy available to him in terms of Clause 32A of the Control Order against the said order of suspension which, this Court finds, was in terms of sub-clause (1) of Clause 31 of the Control Order. In the circumstances, this Court does not find any merit in this writ application. The same is dismissed but without prejudice to the right of the petitioner to prefer an appeal against the impugned order in terms of the sub-clause (2) of Clause 32A of the Control order with liberty to him to claim for condonation of delay in the light of the provisions of Section 14 of the Limitation Act.