

(2023) 03 PAT CK 0045

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 9441 Of 2022

Archana Gupta

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 20-03-2023

Acts Referred:

Bihar Targeted Public Distribution System (Control) Order, 2016 — Rule 28

Citation : (2023) 03 PAT CK 0045

Hon'ble Judges : Sanjeev Prakash Sharma, J

Bench : Single Bench

Advocate : Arjun Kumar, Arvind Ujjwal, U.P. Singh

Final Decision : Dismissed

Judgement

Heard learned counsel for the parties.

The petitioner, being the Chairman of PACCS, Balba preferred this writ petition assailing the action of the respondents of suspending the licence allotted to him.

Learned counsel appearing on behalf of the petitioner submits that in the three show cause notices issued to the petitioner, the details of the inspection report were not mentioned and therefore principles of natural justice have been violated. The petitioner ought to have been supplied with the copy of the inspection report.

Learned counsel further submits that the suspension of licence can be at best for a period of 180 days and after expiry of 180 days, the suspension ought to be held inoperative.

Learned counsel for the petitioner also further submits that the details of various ration cards, mentioned in the order, where it is alleged that more than two to three times rason has been released, have never been made available to the petitioner, so that he could have answered with regard to the alleged anomaly. He submits that the order therefore is vitiated in law and deserves to be quashed.

Per contra, learned counsel appearing for the State submits that the licence was issued to the PACCS and not to individual petitioner, Archana Gupta. It is stated that the licence was issued with petitioner Archana Gupta, being the Chairman of the PACCS. She herself was operating the licence and while she was operating, several discrepancies were found during inspection. The discrepancies were mentioned in the show cause notices issued to the petitioner and thrice opportunity was given to the petitioner to explain about the discrepancies committed in the PDS dealership. However, the explanation was not found to be satisfactory and a detailed order was passed suspending the licence of PACCS.

It is further submitted that the State Authorities have issued a circular whereby suspension of licence of PACCS is only with reference to the person who has been nominated to run the shop on behalf of the PACCS. If the PACCS society nominates any other person to operate the said licence, the State Authorities would not come in the way and allow the PACCS to continue with the operation of the PDS licence. However, the petitioner, who is the Chairman of the PACCS, insists to continue the licence in her own way and wants to operate herself. Since discrepancies have been found while she was operating the licence, the suspension order has rightly been passed and does not warrant any interference.

This Court has considered the submissions made on behalf of the parties. Only Rule 28 of the Bihar Targeted Public Distribution System (Control) Order, 2016 (hereinafter referred to as "the Order, 2016") refers the provision of suspension of licence, which reads as under:

"28. Actions to be taken against a licensee after a FIR lodged. - If an FIR is lodged against a licensee under the Essential commodities Act, 1955 or for any other criminal cases, and he is sent to jail or he goes fugitive, his license shall be suspended by the licensing authority with immediate effect, and after serving show cause notice upon him in accordance with Civil Procedure Code and giving him sufficient opportunity to present his case, a lawful action shall be taken within 180 days, as far as possible."

There is no other provision for suspension of licence under the Order, 2016. However, it seems that the state authorities have taken decision to suspend the licence of PACCS with a view to allow any other person to be nominated to continue with the said licence, finding that the person, who has been nominated by PACCS, is not operating the same in terms of the conditions of licence.

In the opinion of this Court, while there may not be a provision under the Order, 2016 to suspend the licence of a PACCS society, the decision taken by the State for suspending licence, on conducting inspection that the nominated person is not acting in accordance with the conditions, cannot be said to be illegal or unjustified. The power is inherently available with the licensing authority.

The question, however, arises as to whether opportunity of hearing was provided to the petitioner before passing order of suspension of licence or not?

In the opinion of this Court, the action taken by the respondents by issuing show cause notice and giving opportunity to file the reply, is sufficient for the said purpose. Since no detailed enquiry is required to be done at the stage of suspension of licence, the contention raised by the learned counsel for the petitioner of non-supply of inspection report, is not found to be sustainable. Even otherwise, this Court finds that the petitioner in his reply to the show cause, has nowhere contended of non-supply of inspection report. Thus, this Court finds that non-supply of inspection report has, in no manner, prejudiced the petitioner. In *ECIL & Ors. Vs. B. Karunakar & Ors.*, reported in 1993(4) SCC 727, a Constitution Bench of Supreme Court has considered the aspect of non-supply of enquiry report and has observed that the same would vitiate proceeding only if it is found that prejudice has been caused to the concerned delinquent.

Having noticed the aforesaid judgment, this Court finds that the petitioner having not raised the contention regarding non-supply of inspection report anywhere during reply to the show cause notice no serious prejudice can be said to have been caused to her. The contention of learned counsel for the petitioner on this count, therefore, stands rejected.

The third contention, raised by learned counsel for the petitioner, is with regard to the period of suspension. He has stated that the suspension cannot be continued beyond 180 days. This Court finds that as per Rule 28 of the Order, 2016, a suspension should ordinarily remain for 180 days. However, in the Rule 28 of the Order, 2016 the words 'as far as possible', is used and the same therefore, cannot be said to be mandatory. Although, Rule 28 of the Order, 2016 would have no application, even if we borrow the said Rule for the suspension as in this case.

Keeping in view of above, the contentions raised by the petitioner fails.

Having reached to the aforesaid conclusion, this Court further observes that the respondents would revoke their suspension, if the PACCS places another nominee before it for running the PDS dealership.

Granting such liberty to the PACCS, Balba, the present writ petition is dismissed.