

(1996) 05 PAT CK 0026
In the Patna High Court
Case No : C.W.J.C. No. 455 of 1993 (R)

Ashok Kumar Agrawalla

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 22-05-1996

Acts Referred:

Essential Commodities Act, 1955 — Section 3, 5, 7

Citation : (1996) 2 BLJR 1257

Hon'ble Judges : R.N. Sahay, J;P.K. Deb, J;Gurusharan Sharma, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

P.K. Deb, J.—A Division Bench of this Court, vide order dated 2.3.1993 has referred this case for consideration by a larger Bench as the Divisional Bench differed with the ratio of two decisions of this Court by Division Benches in CWJC Nos. 298 of 1993 (R) and 777 of 1992(R).

2. Short facts of the case are necessary to be stated for the purpose of appreciating the legal points involved. The petitioner is the proprietor of M/S Gopal Bhandar which deals in whole sale food grains having its place of business at Kirkand in the district of Dhanbad. He is having a licence under the Bihar Trade Articles (Licence Unification) Order, 1984 (Hereinafter referred to as "the Unification Order"), being licence No. 45/85. The Market Committee, Dhanbad set up under Bihar Agricultural Produce Market Act, 1960 (hereinafter referred to as "the Act"), through its Secretary were pressing upon the dealers of the food grains in the Market area of Dhanbad for shifting their respective establishment at Kirkand to the Market yard at Domara Barwa. When the dealers including the petitioner did not accede to the directions of the said Secretary of the Marketing Committee, the Respondent No. 2, who is the Licensing Authority under the Trade Unification Order under Essential Commodities Act (for short "E.C. Act") suspended their licences for disobedience of aforesaid direction of shifting of their business premises to the market yard.

3. Some of those dealers came up before this Court challenging the above suspension order in the above mentioned two writ petitions. The Division Bench of this Court in both cases allowed the writ petition holding that a licence issued under the Unification order cannot be cancelled due to non observance of the directions to shift their place of business to the Market yard as per the Act the following reasons:

(i) That the period of 90 days having lapsed after the suspension of licence, the fresh notice issued for showing cause as to why the licence should not be cancelled is illegal and hence notices were quashed.

(ii) That the licence under the Unification Order was issued after being satisfied about the place of business shown by the dealer and the same cannot be altered or changed by the Licensing authority at the instance of the Secretary to the Market C6mmittee for shifting to market yard as per the Act/after the amendment of Clause-9 of the Unification Order deleting the word "suomoto".

4. In the reference order as mentioned above, the Division Bench (one of us Gurusharan Sharma, J. who was party to it) is of the opinion that condition No. 11 of he licence "clearly envisages that the licensee must if he functions in regular market abide by the instructions relating to his business given by the marketing authority having jurisdiction."

And further of the view that "once a Principal market yard is constructed, a wholesale licensee dealing in foodgrains is required to shift his place of business to the settled market yard, he cannot carry such business in any other place. The law appears to be fairly settled. In such a situation, even if the licensee possesses a valid licence he cannot carry on his business anywhere else and therefore, the existence of licence has no meaning."

5. In the meantime, another Division Bench of this Court in Swagat Stores and Others Vs. The State of Bihar and Others , although in another context held that the direction given by the State Government to traders to shift to market yard, non compliance of which resulted in cancellation of licence is valid under Clause-10 of the Unification Order. In the referred decisions, market committee was not party and as such they did not get chance to support their actions regarding directions given for shifting, non compliance of which caused suspension of the licences under Unification Order.

6. In the present case, they got themselves impleaded as respondents and they fought the case vehemently and rightly so when their cause has been primarily protected by the licensing Authority by passing suspension order.

7. At the very beginning, Mr. M.M. Benerjee, learned Counsel for the petitioner submitted that the latest decision of this Court in the matter in issue i.e. Swagat Stores and Others Vs. The State of Bihar and Others has been challenged in the Supreme Court and the matter is pending at SLP stage.

Some dates would be relevant in the case for proper appreciation of the matter

in issue. Vide Annexure 3 dated 21.8.1991, Market Committee issued notice to the petitioner for shifting the place of business from Bhagwa Barwa to Principle Market Yard as per Notification No. S.O. 133 dated 1.2.1989 under the Act. Vide Annexure-4 dated 10.12.1991, Deputy Commissioner, Dhanbad reiterated the same direction. By Annexure-5 dated 28.1.1992, licence of the petitioner was suspended by the Deputy Commissioner for non compliance of the direction and also issued show cause notice for cancellation of the licence. On 25.5.1992 petitioner filed reply to show cause before the Deputy Commissioner, Dhanbad in compliance of the direction given by this Court CWJC No. 1455 of 1992 (R). Vide Annexure-7, the Deputy Commissioner, Dhanbad again gave a fresh show cause notice for cancellation of licence in view of the judgment of this Court CWJC No. 1802/91 (R) reported in Keshoram Agarwala and Others Vs. State of Bihar and Others . Petitioner gave reply vide Annexure-9 then again vide Annexure-10 dated 12.11.1992, the licence was suspended by the Deputy Commissioner, Dhanbad as well as notice to show cause was. issued as to why the licence should not be cancelled. Petitioner submitted reply to show cause vide Annexure-11 on 26.11.1992.

8. The point that is required to be decided by this Bench is whether non compliance of the direction regarding shifting of place of business to the Market Yard as per the Act can be a ground for cancellation of licence issued under the Unification Order within the purview of the E.C. Act.

9. On scrutiny of the provisions of the Act, it is found that the same is a self contained Act having all provisions for issuance of licence, cancellation thereof and non compliance of the directions given under the Act resulted in penal action. The licence cancelled in the present case was issued under the notification Order under the provisions of E.C. Act. Provisions to the Unification Order, there were individual licences issued for dealing with individual items of essential commodities. After the Unification Order, a trader is not required to take separate licences for the separate items of essential commodities. A single licence is now required under the Unification Order for dealing in several items under the E.C. Act.

10. Here, in the present case, the petitioner is a licence holder for the wholesale foodgrains but there may be licences under to Unification Order for foodgrains a longwith other items as contemplated under the E.C. Act. Besides agricultural produce i.e. foodgrains there might be other items covering the Unification Order for the purpose of licence not included within the Act.

In a given case, if a trader is granted licence of wholesale foodgrains along with other items not covered by the Ate then definitely non compliance of the direction of shifting to Market Yard cannot entail the cancellation of licence as a whole.

11. The E.C. Act under which the Unification Order has been based was enacted under Entry No. 33 of the Concurrent List of with Schedule of the Constitution of

India, whereas the Act has been enacted by the State in terms of Entries 26 and 17 of the State List. As such, it is well settled that both these Acts operate in different fields, one is not dependent on the other. The Act has been enacted to protect the producers of commercial crops from being exploited by the middle men and to enable them to secure a fair return for their produce. It is a self-sufficient Act and all powers have been conferred on the Market Committee for protecting the said Object as mentioned above. It can issue licence, give directions as per the provisions of the Act, violation of which may result in protection of the licensee. Thus any legally valid direction/instruction under that Act can be promulgated/implemented under various provisions of the Act, violation of which may attract penal provisions contained under the said Act. As such provisions of the Act may not come in aid for any provisions for the E.C. Act or the vice versa.

12. Mr. Ram Balak Mahto, the learned Counsel appearing for and on behalf of the Market Committee has relied much on Condition No. 11 of the licence of the Unification Order, suspension of which is the matter of dispute in the present case.

Condition No. 11 runs as follows:

The licensee shall, in case when he functions on the regulated market, abide by such instructions relating to his business as are given by the Marketing authority having jurisdiction, and in any other case such body as may be recognised by the State Government in this behalf.

Mr. Mahto's contention is that "regulated market" as mentioned in the condition may be constructed as the market area as contemplated under the Act and as such instructions given by the Market Committee under the Act can be construed as the "instruction" as contemplated under the Condition and as such according to him, all licensees under the Unification Order are bound by such instructions, violation of which may result in suspension of the licence as is done in the present case.

13. I am not convinced with the argument of Mr. Mahto. Under the E.C. Act or the Unification Order, this regulated market has nowhere been defined. Moreover, instruction as envisaged under the aforesaid condition relates to the business of the licensee. This cannot be considered as the directions regarding shifting of the business to the market yard as per the Act. In my view, those instructions relate to timing of opening and closure or other instructions regulating the business for the purpose of the licence. Under the Unification Order, Licensee is required to mention his place of business in the application from itself and accordingly in the licence the place of business is recorded. If that place of business or the Establishment is required to be changed or altered, the same can be permitted only under Clause-9 of the Unification Order and such addition and alteration made in the entries specifically in respect of place of business can be done at the option of the licensee and not by the licensing authority. The word

"suo moto" as mentioned earlier had been deleted by the amendment of Clause-9. Thus shifting of place of business can only be done at the option of the licensee and not by authority under the Unification Order.

14. Clause-10 of the Unification Order prohibits the licence holder in contravening of the terms and conditions of the licence and under the E.C. Act such contravention of violation would result in launching of prosecution u/s 7 thereof. When the place of business cannot be altered and imposed on by the licensing authority then condition No. 11 of the licence cannot be construed as an instruction including that of the shifting of the business from the place where the licensee was holding business and on the basis of which his licence was issued and as such non shifting of the business as directed by the Market Committee vis-à-vis echoed by the Deputy Commissioner, the Licensing Authority under the Unification Order cannot be said to be violative of licence condition for which suspension/cancellation order can be passed under Clause-II of the Unification Order.

15. Directions under the Act shifting of the place of business to the Market Yard can itself be considered as a direction under the said Act, violation of which results in penalisation of the dealer under the Act by launching prosecution. If the same direction given by the Market Committee to a dealer under the Act is also considered as a direction by the Licensing authority under the Unification order then violation of the same would mean the penalisation of the dealer both under the Act and also under the E.C. Act which would cause double jeopardy. As such direction under the Act for the purpose of shifting to the Market Yard can never be constructed as an instruction as contemplated under Condition-11 of the licence under the Unification Order.

16. When the licensing authority do not have any power to direct change of place of business so far as the licence under the Unification Order is concerned in terms of Clause-9 thereof, then in no case the Licensing Authority under the aid of the Act can exercise such a power under Clause 10 of the said order. When the Act is a self contained Act and non implementation of any direction given by Market Committee can be well dealt with under the said Act, it should not and cannot come in aid for violation of the terms and conditions of the licence under the Unification Order. Section 48 of the Act is clear wherein penal provision has been contained, where any person or dealer violating the provisions of the Act, Rules or Orders passed therein can be punished to the extent of imprisonment of one year and fine of Rs. 1000/- or both.

17. The petitioner in this case must be a licensee under the Act and if there is any violation of the directions of the Market Committee then he is contravening the conditions of licence granted by the Market Committee and he may be penalised for that purpose under the said Act itself.

18. The Unification Order came in force in the year 1984 whereas the Act is in force since 1960. If the directions under the Act are also to be taken as mandate

under the Unification Order than, the terms and condition of the licence "or" the Unification Order must have clearly mentioned the same it cannot be said that any direction, given the State of Bihar under any other Act should also be constructed as an instruction for regulating the business of the licensee under the Unification Order.

19. It has already been mentioned that violation of the terms and, conditions of the Unification Order would result in suspensions of the licence and more over penalization u/s 7 of the E.C. Act again the violation of directions under the Act would result in penalisation u/s 48 of that Act. So, the violation of the Unification Order for attracting penal provisions under the E.C. Act. There cannot be penalisation under both the Acts for the same violation. So considering that touch stone also, I am not convinced that violation of the directions given under the Act can cause suspension of the licence issued under the Unification Order. The Licensing Authority under the Unification Order. The Licensing Authority under the Unification Order cannot have the authority to issue a directions for change of place of business as contemplated under the Act as the same is clearly barred under Clause-9 of the Unification Order. Hence, the Deputy Commissioner, Dhanbad was wrong in echoing the direction given by the Market Committee to the petitioner under the Unification Order as such the suspension order for violation of such direction is illegal and without jurisdiction and hence the same is quashed,

R.N.Sahay, J.

I entirely agree with the view expressed by brother Deb, J, but considering the importance of the questions involved, I would approach the problem in a slightly different angle.

20. The petitioner is a wholesale dealer of foodgrains and is a licensee under the Bihar Trade Articles (Licences Unification) Under, 1984. The petitioner while making application for grant of licence was required to give details of place where he intended to carry on his business. The petitioner was granted licence for the place indicated by him in his application under the Unification Order and in terms of the licence, a licensee is obliged to carry on his business at a place mentioned in the licence and in case of breach of this condition his licence is liable to be cancelled/suspended.

21. Petitioner's place of business as mentioned in his licence is "Bhaga" P.S. Jorapokhar in the district of Dhanbad Clause 9 of the Unification Order as it originally stood read as follows:

9. Additions and alterations to licence: The Licensing authority may make necessary additions, deletions and alterations in the entries made in the licence relating to godown, place of business, names of partners, trade articles, etc, either on the application of the licensees or suo motu.

The said clause was amended on 17.10.1985 and after amendment it reads as

follows:

9. Additions and alterations to licence: That licensing authority after giving one opportunity may make necessary additions, deletions and alternations in the entries made in the licence relating to godown, place of business, names of partners, trade articles etc. On the application of the licensee.

22. It appears that the second respondent (licensing authority) by an office order dated 21.8.91 (Annexure-3) intimate the petitioner that he had not complied the earlier direction to shift his business within the premises of Agricultural produce market area, Barbadda. So he must shift his place of business at the aforesaid place within one week. The petitioner was also threatened with cancellation of his licence in the event of failure to obey the above directive, which amounted to breach of the terms of the licence. The petitioner did not carry out the directions contained in Annexure-3 and he was served with yet another notice on 18.12.1991 to shift his business premises to the principal market yard at Damkara, Barwa.

23. As the petitioner refused to shift his business to the Principal Market Yard as directed by the licensing authority, consequently his licence was suspended by order dated 28th January, 1992. The petitioner challenged the said order before this Court in C.W.J.C 1445/92 R. A Bench of this Court by order dated 14.5.92 (Annexure-6) disposed of the aforesaid application giving liberty to the petitioner to file show cause before the Deputy Commissioner, Dhanbad, who was directed to consider the submissions of the petitioner.

24. The petitioner filed his show cause before the 2nd respondent on 25.5.92 (Annexure-7). In his show cause the petitioner disputed the jurisdiction of the licensing authority to direct a dealer to change the place of business without consent of the licensee. The petitioner further contended that only the Market Committee is vested with the authority to direct a dealer to shift his business premises to principal market yard and the Committee had not issued any notice to the petitioner. The petitioner relied on a decision of this Court in CWJC 777/92(R) dated 12.3.92 which fully supported the stand of the petitioner. The petitioner pointed out that the shops at the principal, market yard were not in good condition and were situate more than 15 Kms. from Bhaga. So it was not expedient to shift his business there.

25. The Deputy Commissioner, however, did not take notice of the show cause filed by the petitioner aforesaid. The Deputy Commissioner by his order dated 25.7.92 (Annexure-8) directed the petitioner to show cause as to why his licence shall not be cancelled for breach of Clause 11 of the licence, since he had not obeyed the direction of the Secretary of the Market Committee to shift his place of business not the Market yard.

26. Clause 11 of the licence provides:

A licensee shall in case he function in a regulated market, abide by such

instruction relating to his business as are given by Marketing authority having jurisdiction, and in any other case by such body as may be recognised by the State Government in this behalf.

27. The petitioner submitted his show cause (Annexure-9) in which he asserted, that he had not violated the condition No. 11 of his licence in any manner nor violated Section 15(1) of the Bihar Agricultural Produce Market Act, 1960 or rules framed thereunder. The petitioner further made a grievance to the effect that his licence was sought to be cancelled on a new ground without deciding his objection in his earlier show cause and without considering the order passed by this Court in C.W.J.C. 777/92(R).

28. The petitioner referred to the show cause notice of cancellation of his licence and contended that proceeding for cancellation had been initiated on the basis of the order dated 23.4.92 passed in C.W.J.C. 1802/91(R) against which SLP was pending before Hon'ble the Supreme Court. The petitioner again challenged the decision of the licensing authority to cancel his licence on the ground stated in the show cause notice.

29. The licence of the petitioner had already been suspended as stated earlier. The Deputy Commissioner however passed no orders with regard to the cancellation proceeding. The suspension order was not withdrawn either.

30. By virtue of Clause 11 of the Unification Order, the suspension of licence become non-est after 90 days of the order. In the meantime, the duration of the licence of the petitioner also expired. So no effective relief can be granted to the petitioner and as such the application has become infructuous.

31. This case was placed for admission before a Division Bench and the Bench expressed doubt about the correctness of the two decisions of this Court, namely, CWJC 298/93(R) disposed of on 22.1.93 and CWJC 777/92(R) disposed of on 12.3.92.

32. u/s 3 of the E.C. Act, 1955, Central Government is empowered to promulgate order for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein. Sub-section (2) of Section 3 provided: that if an order is made under Sub-section (1) of Section 3 it provided for grant of issue of licences in other alleged matters.

Under Section 5 of the Essential Commodities Act, State Government is empowered to direct that the power to make orders or issue notifications u/s 3 shall in relation to such matters and subject to such conditions, if any, as may be specified in the direction be exercised also by such State Government or such Officer or authority subordinate to a State Government or Officer/authority subordinate to Central Government.

In exercise of the delegated power, the State Govt. with prior concurrence of the Central Government issued Bihar Trade Articles (Licence Unification) Order, 1984.

Sub-clause V of Clause 2 of the Order defines "dealer" as follows:

dealer means a person, a firm an association of persons, or a co-operative society other than a National and State level Cooperative society, engaged in the business of purchases, sale or storage for sale of any trade articles whether or not in conjunction with any other business and includes his representative or agent but does not include-

(i) A person who holds or is in possession of agriculture land under any tenure if any capacity and on which he raises or has raised crop of foodgrains oilseeds or whole pulses;

(ii) a manufacture of sugar;

(iii) hawkers engaged in the purchase and sale of non-controlled cloth.

"Place of business" is defined in Sub-clause "1" which defines "place of business" means any place where written transaction of trade articles is done and their stock, sale and account registers are maintained.

"Wholesale dealer" is defined in Sub-clause (u) which means: a person engaged in the business of purchase, sale or storage of any article (specified in Schedule 1, for purpose other than personal consumption within the storage limit fixed by the Government from time to time.

Schedule I of the Order contains list of grains, pulses oil seeds, edible oils and other articles.

Clause 3 of the Unification order provides:

3. Licensing of Dealers. 1. No dealer shall after the commencement of this Order, carry on business of purchase sale or storage for sale of any of the trade articles mentioned in Schedule I except under and in accordance with, the terms and conditions of a licence issued in this behalf by the Licensing Authority under the provisions of this Order.

Provided that no licence shall be required from a dealer who stores for sale or any one time the trade articles, in quantities not exceeding the limits as may be prescribed by the State Government with prior concurrence of the Central Government for any trade article from time to time.

Provided further that a dealer holding a valid licence of trade articles under the various Licensing Orders mentioned in Schedule III may obtain licence for the same trade articles under this Order upto 15th April, 1985 the commencement of this Order. His existing licence shall be deemed to be a licence issued to him as a dealer under this order up to the said day.

(2) For the purpose of this clause, any person, firm association of persons or a co-operative society who stores any trade articles at any one time in quantities exceeding the limits prescribed in Sub-clause (1) shall unless the contrary is proved by him be deemed to be carrying on business and not store the same for

the purpose of sale.

Clause 9 provides as follows:

9. Addition and alteration to licence: The Licensing authority after giving due opportunity may make necessary additions, deletions and alterations in the entries made in the licences relating to godown, place of business, names of partners, trade articles etc. on the application of the licensee.

Clause 10 lays down as follows:

10. Contravention of conditions of licence: No holder of licence issued under this Order of his agent or servant or another person acting on his behalf shall contravene any of the terms and conditions of the licence.

33. In 1971 PLJR 624, a Division Bench of the Patna High Court held that a licence can be cancelled only for violation of any provision of License/Unification Order, the term "condition" being condition of licence and on no other ground which are not covered by the terms and conditions of licence.

34. Under Clause 4(1)(b) of the Unification Order, the form of licence i.e. form C is prescribed for wholesale and retail dealers. This formal licence prescribes various terms and conditions. Clause 10 and 11 of the prescribed licence which is relevant for the purpose read as follows:

10. The licensee shall comply with any direction that may be given to him by the State Government or the Collector or the Licensing Authority with regard to the purchase, sale and storage for sale of these trade articles and in regard to the language in which the registers, returns, receipts or invoice" shall be written and in regard to. the authentication and maintenance of the register mentioned in paragraph 3 above.

11. The licensee shall in case when he functions in regulated market, abide by such instruction relating to his business as are given by the marketing authority having jurisdiction and in any other case by such body as may it recognised by the State Government in this behalf.

35. Bihar Agricultural Produce Markets Act, 1960 was enacted for better regulation of buying and selling of agricultural procedure and he establishment of markets for agricultural procedure in the State Bihar and for matters connected therewith.

Sub-clause (2) of Section of the Act provides for establishment of a market committee. Market was includes principal market yard and sub-market yard or yards if any.

Section 4 of the Act provides for declaration of market area which reads as follows:

Declaration of market area: 1. After the expiry of the period specified in the notification issued u/s 3 and after considering such objection and suggestions as

may be received before such expiry and after holding such enquiry as it may consider necessary, the State Government may by notification declare the area specified in the notification u/s 3 or any portion thereof to be a market area for the purposes of this Act, in respect of all or any of the kinds of agricultural produce specified in the notification u/s 3(2) On and after the date of publication of the notification under Sub-section (1) or such later date as may be specified therein, no municipality or other local authority or other person, notwithstanding anything contained in any law for the time being in force, shall within the market area, or within a distance thereof to be notified in the official Gazette in this behalf, setup establish/or continue or allow to be set up, established, or continued, any place for the purchase, sale storage or processing of any agricultural produce so notified, except in accordance with the provisions of this Act, the rules and bye-laws.

Section 5 of the Act provides:

Declaration of market yards: 1. For each market area there shall be one principal market yard and there may also be one or more sub-market yard or yards as may be necessary.

36. Under the aforesaid Act Principal Market Yard and the market area has been declared in the district of Dhanbad. It appears that in the year 1980, the traders of Jharia and Dhanbad were, directed to shift their places of business to the principal market yard in view of mandatory provisions contained in Section 4 of the Bihar Act, 1960. The traders challenged the direction of the Market Committee to shift their place of business in C.W.J.C. No. 725/80(R), *Swastik Bhandar v. State of Bihar* CWJC No. 768/86 (R), *Sahu Bhandar and Ors. v. State of Bihar and Ors.* The writ application was dismissed. The traders moved before the Hon'ble Supreme Court in SLP No. 320 and 321/91. Both the cases were dismissed as withdrawn.

37. The Trader despite the consistent decision of this Court and the Supreme Court have been defying the move of the authorities to shift their places of business in the market yard.

38. In the instant case also the petitioner refused to shift his place of business. In order to compel the petitioner to shift his business started taking coercive measure as stated in the earlier part of the judgment. The licensing authority directed the petitioner to shift his premises to principal Market Yard at Dahkara Barwa (Annexure-3) Petitioner having not complied with the direction his licence was suspended.

39. A Division Bench of this Court in CWJC 777/92 (R) held that the licensing authority has no jurisdiction to cancel the licence for not shifting the place of business by the traders as there is no provision in the condition for cancelling of licence on account of non-compliance with the direction for shifting the place of business since Clause 9 of the Unification Order as amended on 17.10.85 did not confer any jurisdiction to the licensing authority to change the place of business

suo main.

40. Unless the existing place of business mentioned in the licence is not suitably changed, the trader cannot carry on business in the principal market yard. There can be no doubt that after establishment of the Market Yard, a trader is obliged to shift his place of business to the Market Yard.

41. It is pertinent to note that the Deputy Commissioner has nothing to do with Bihar Act, 1960. Under Clause 11 of the licence, a licensee when he functions in a regulated market is to abide by such instruction relating to his business are given by the market authority. Probably the Deputy Commissioner has taken a decision against the petitioner by resorting to Clause 11 of the licence.

42. This question was causally considered in *Swagat Stores and Others Vs. The State of Bihar and Others*. The D.B. held in para 23 of the report which is relevant for the purpose:

There cannot be any doubt as it is well settled that the provisions of the said Act as the Essential Commodities Act operate in different fields. Respondents 2 and 3 therefore in their capacities as authorities under the provisions of Trade Article (Licences Unification) Order may not be entitled to enforce the provisions of the said Act. However, in terms of the provisions of the Essential Commodities Act as also the provisions of the said order it becomes the duty of the licensing authority to see that the licensees under the said order carry out their business not only in accordance with the provisions of the Essential Commodities Act or the orders made thereunder but also in terms of the provisions of the said Act. It seems that by reason of a Notification Clause (9) of the said order has been amended in terms whereof the words "suo motu" have been deleted. Thus the respondent No. 2 or for that matter the respondent No. 3 may not have any power to make corrections in the sites of the business of the licensees in terms of Clause (9) of the said order. However, in my opinion, such a direction is permissible in law in terms of condition No. 10 of the licences granted the licence which reads:

10. The licence shall comply with any direction that may be given to him by the State Government or the Collector of the Licensing authority with regard to the purchase, sale and storage for sale, of these trade articles and in regard to the language in which the registers, returns, receipts of invoice shall be written and in regard to the authentication and maintenance of the register in paragraph above.

Such a residuary power of the licensing authority has been preserved for its exercise only in an appropriate case like the present one. The licensing authority, therefore, although do not have any power to direct change of place of business so far as the licence under the said order is concerned of terms of Clause 9 thereof, but in a given situation in my opinion, he can exercise such a power under Clause 10 of the said Order. Only if such construction is put, provisions of both the Act as rules, in my opinion can I give effect to.

43. In the passage quoted above, Sinha, J. only observed that in certain cases, the licensing authority in exercise of power under Clause 10 may dire change of place of business although Clause 9 of the Order in express tern debars the licensing authority to change the place suo motu. The observation Sinha, J. is obitar dicta since this question did not arise for consideration Swagat Stores case. As rightly held by Sinha, J. in paragraph 24, Section 48 the Act contains a penal provision in terms where of any person who violates the provision of the Act is liable to be punished. There is ample provision the Bihar Act to force a trader to comply with the provision of the Act. I do n agree with the view of Sinha J. that in terms of Clause 11 of the licence licensing authority can direct a trader to shift his place of business to the Market yard. If this interpretation is accepted, than the petitioner can also I prosecuted u/s 7 of the E.C. Act for contravention of the direction.

44. In my view Division Bench in Chandiram Agarwal and Ors. v. State of Bihar C.W.J.C. 777/92 R, has taken the correct view of the matter. In n view on a clause reading of Clause 11 of the licence, it is apparent that the said clause can be invoked only where the trader functions in a regulated mark Admittedly in the present case, the petitioner has not shifted his business the market yard; so he cannot be forced to obey to decision of the Mark Committee.

45. I fully agree with the view taken by Deb, J.

Gurusharan Sharma, J.

46. With great respect to my learned Brotheren, I am unable to persuade myself to subscribe the views expressed by Thi Lordships. However, I do not propose to elaborate the reasons to my dissent The term "regulated market" used in the terms and conditions No. 11 of the Licence under the Bihar Trade Articles (Licences Unification) Order, 19 (hereinafter to be referred to as the "Unification Order") means the "mark u/s 2(h) of the Bihar Agricultural Produce Markets Act, 19 (hereinafter to be referred as to the "Act") within the "market area" as define u/s 2(i), regulated by the Act and includes the Principal Market Yard and Submarket yard, Under the said Condition No. 11, a Licensee doing business in the market area has to abide by the instructions relating to his business given by the Marketing authority having jurisdiction. Under Clause 11 of the Unification Order, for contravention of any of the terms and conditions of the Licence, without prejudice to any other action that may be taken under the Essential Commodities Act, 1955, the Licence may be suspended or cancelled with regard to one or more trade Articles. No doubt for violation of Section 15 of the Act, a trader is liable for criminal prosecution u/s 48 of the Act, but for his failure to abide by the instructions of the Marketing authority and thereby contravening Condition No. 11 of the Licence, in my opinion, there is no bar in taking steps for suspension/cancellation of his Licence issued under the Unification Order with the respect to the notified agricultural produce. In my opinion, instruction of the Marketing authority to such a Licensee to shift his place of business of a notified agricultural produce comes within the meaning "instruction relating to his

business" as mentioned in Condition No. 11 of the Licence. There is no question of double jeopardy. Cancellation of Licence is one thing and a criminal prosecution is another and in a given situation both consequences may ensue as contemplated by Clause 13 of the Unification Order. However, if the Licence authorise trading in more than one commodity, only that part of the Licence may be suspended/cancelled as required for giving effect to the law. so that trading in any commodity, which is a notified agricultural produce, is not carried on at a particular place in breach of law relating to markets. No conflict has been pointed out between the Act and the Unification Order. The Unification Order deals with Licensing of traders and incidentally the Licence issued under it mentions the place of business for effective control, which can be altered under Clause 9 at the instance of the Licensee. The place where a business may be carried on is determined by the Law relating to establishment of markets under the Act and as such, in my view, the two enactments must be read harmoniously. The Act prohibits a trader for doing business of a notified agricultural produce outside the Market yard and as such a Licence under the Unification Order in respect to the business of such a commodity is effective and valid only if the place of business is within the Market yard. It is open for a Licensee, in order to comply with the law, if necessary, to get his place of business mentioned in the Licence, accordingly altered under Clause 9 of the Unification Order. The Order of suspension of the petitioner's Licence as well as impugned notice (Annexure-8) issued by the Deputy Commissioner regarding cancellation of his Licence for breach of Condition No. 11 meant to give effect to the Law, which is binding and are, therefore, legal, valid and justified and no interference therein by this Court is required. This writ application is accordingly dismissed.