

(2018) 05 PAT CK 0093

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 6646 Of 2018

Krishna Prasad

APPELLANT

Vs

State Of Bihar Through The Principal Secretary And Ors

RESPONDENT

Date of Decision : 07-05-2018

Acts Referred:

Citation : (2018) 3 PLJR 936

Hon'ble Judges : Vikash Jain, J

Bench : Single Bench

Advocate : Rajeev Kumar Labh, Alok Ranjan

Final Decision : Disposed Of

Judgement

1. Heard learned counsel for the petitioner as well as for the respondents.

2. The present writ petition has been filed for the following reliefs â?

â??(i) A Certiorari for quashing and setting aside the order passed by the Sub-Divisional Officer, Danapur vide Memo No. 22 dated

1/9/2017 whereby and whereunder license of the petitionerâ??s Fair Price Shop bearing No. 01/2016 has been suspended only on a sole

ground that a F.I.R. has been lodged against the petitioner as well as quashing and setting aside the order passed by the same authority

vide Memo No. 186 dated 24/2/2018 whereby and whereunder license of the petitionerâ??s Fair Price Shop bearing No. 01/16 has been

cancelled contained in Annexure-1 (Series).

(ii) A mandamus commanding the Respondents to restore the petitionerâ??s license as before and to make allotment for the petitionerâ??s

shop.

(iii) Any other relief or reliefs for which petitioner may be found entitled in the fact and circumstances of the present case may be granted to

him.â??

3. Learned counsel for the petitioner submits that the impugned orders of suspension and cancellation of his PDS license are arbitrary and illegal. It is

submitted that the order of suspension could not have been passed merely on the ground that an FIR bearing Bihta P.S. Case No. 630 of 2017 has

been instituted against the petitioner. In any event, it is submitted that the subsequent order of cancellation dated 24.09.2018 (at page 14) has been

passed on the same set of facts and on the same charges which is impermissible, in view of the decision of this Court in Shiv Chandra Jha vs Harideo

Jha, 2013(3) PLJR 956.

4. Learned counsel for the respondents appears.

5. Having heard learned counsel for the parties and on careful consideration of the materials available on record, this Court finds that the impugned

order of suspension was passed on 01.09.2017, and within a period of 180 days thereafter, the impugned cancellation order dated 24.02.2018 has been

passed. The suspension order while in operation was not challenged by the petitioner and in view of the subsequent development whereby the

petitionerâ??s PDS license was cancelled, the prayer for setting aside the impugned order of suspension has now become infructuous and is

dismissed as such.

6. The impugned order of cancellation has been challenged mainly on the ground that the same is founded upon the same ground and on the set of

facts as the suspension order. It has been submitted that such action of the respondents amounts to double punishment, once by way of suspension

and then by way of cancellation. Reliance has been placed on a Division Bench judgment of this Court in Shiv Chandra Jha vs. Harideo Jha (supra).

The said decision was rendered after taking note of the earlier judicial pronouncements and finally concluding that once the licensing authority had

suspended a license, it was divested of its power to cancel the license.

7. The submission of the petitioner appears rather attractive at first blush. However, a deeper reading reveals a somewhat different state of affairs. It

is significant to note that in Shiv Chandra Jhaâ??s case (supra), the suspension order had been passed on 10.06.2008 and thereafter the cancellation

order on 06.09.2008. The provisions in this regard were to be found in Clause 7 of the Fair Price Shops Order, 2007 which came into force with effect

from 20.02.2007, superseding the provisions of the Bihar Trade Articles (Licenses Unification) Order 1984. The relevant clause 7(ii) of the Fair Price

Shop Order 2007, prior to its substitution by notification dated 23.06.2011, reads as follows â?

â??(ii) If any licensee contravenes the provision, terms of the license, duties, responsibilities and order of State Government then the

Licensing Authority shall suspend/cancel the license by a written order.â??

Sub-Clauses (iii), (iv) and (v) of Clause 7, prior to their omission by the said notification dated 23.06.2011, stood as follows â?

(iii) If F.I.R. is lodged against FPS dealers for contravention of an order issued under Essential Commodities Act, 1955, their license shall

be suspended till the matter is pending before the Court of Law.

(iv) It shall be necessary to ask show cause by the Licensing Authority to licensee before suspending license. Licensee will be given a

reasonable opportunity stating his case against the proposed cancellation.

(v) Suspension of license shall be for a maximum period of ninety days. â?|â??

8. It was in this backdrop that the following observations were made in paragraphs 18, 19, 23 and 24 of Shiv Chandra Jhaâ??s case (supra) which

are reproduced hereinbelow â?

â??18. It is apparent that power to suspend or cancel the license for contravention of the terms of license under the 2007 Order is similar

to the one under Clause 11 of the 1984 Order. Clause 11 of the 1984 Order provides, "... license may be cancelled or suspended ...".

Whereas, Clause 7(ii) of the 2007 Order provides, "...Licensing Authority shall suspend/cancel the license...

19. Clause 7(ii) is clear and unambiguous. The preposition "'or'" used in the said sub-clause is disjunctive and has to be read in the same

way. The power to suspend or cancel the license conferred under the said Clause is clearly a power to impose punishment. The two

punishments envisaged are mutually exclusive. It may be a punishment of suspending the license or of cancelling the license. It cannot be

both.

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23. Once the authority has decided to suspend the license by way of punishment under Clause 7(ii) of the 2007 Order, he cannot proceed

further to cancel the license as no one can be punished twice for the same act of misconduct or offence.â?|â??

24. We have no reason to differ from the aforesaid view consistently taken by this Court. In our opinion, the learned single Judge has

rightly held that once the license was suspended by the licensing authority, it was divested of its power to cancel the license.â??

9. The above situation has drastically changed by the Bihar Targeted Public Distribution System (Control) Order, 2016 by which, inter alia, the 2007

Order has been repealed. In the present case, the suspension order has been passed on 01.09.2017 and the cancellation order has been passed on

24.02.2018. As such, it is not the 2007 Order but the 2016 Order which becomes applicable. It is thus necessary to refer to the relevant provisions of

the 2016 Order, which are being reproduced hereinbelow â?

27. Cancellation of License

(i) If a licensee violates any provision of this Order or fails to comply duties and responsibilities assigned to the licensee, his license shall be

cancelled by the licensing authority by a written order, and such a cancellation of license shall not affect other actions initiated/initiable

under the Essential Commodity Act, 1955 (Central Act 10 of 1955).

(ii) No order of cancellation of a license shall be made until the licensee has been given sufficient opportunity to state his case against the

proposal of cancellation of his license.

(iii) The cases of violation of the provisions of this Order shall be disposed of within two months, as far as possible, after coming in

cognizance as for.

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.â??

10. It is significant to note here that unlike Clause 7(iv) of the 2007 Order which required a show cause by the Licensing Authority to the licensee and

under Clause 7(v), such suspension of license was effective for a maximum period of 90 days, now under Clause 28 of the 2016 Order, no show

cause is required prior to suspension of the license and lawful action is required to be taken within 180 days of the suspension, as far as possible.

Clause 27 of the 2016 Order provides for cancellation of the license upon violation of any of the provisions of the Order or upon failure to comply with

duties and responsibilities assigned to the licensee.

11. It therefore becomes apparent that the provisions relating to suspension and cancellation of license have undergone extensive changes under the

2016 Order. The power of suspension and cancellation are no longer mere alternatives disjuncted by the use of the preposition â??orâ? as was the

case under the 2007 Order. To the contrary, Clause 28 of the 2016 Order envisages the immediate suspension of license without prior show cause

notice only upon fulfillment of certain conditions, to be followed by lawful action within 180 days as far as possible. Cancellation has been specifically

provided separately under Clause 27 of the 2016 Order. In these circumstances, therefore, the decision in Shiv Chandra Jha vs. Harideo Jha (supra)

rendered in the context of the 2007 Order can no longer be held applicable to the cases governed by the 2016 Order. The contention of the petitioner

that both suspension and cancellation of his license have resulted in double punishment, no longer holds good under the 2016 Order and must

accordingly be rejected.

12. The contention of the petitioner on this count must accordingly be held to be devoid of merit and liable to be rejected. It is made clear that this

Court has merely considered the aspect of double punishment and has not entered into the merits of the cancellation order itself. The petitioner shall

be at liberty to assail the order of cancellation on merits before any forum as may be available to him in accordance with law. The writ petition stands

disposed of.