

(1987) 05 PAT CK 0036

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 892 of 1987

Punsraj Begawani and Another

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 18-05-1987

Acts Referred:

Constitution of India, 1950 — Article 226
Essential Commodities Act, 1955 — Section 3, 7

Citation : (1987) PLJR 1150

Hon'ble Judges : S. B. Sinha, J

Bench : Single Bench

Advocate : N. K. Agrawal and J. P. Bhagat, for the Appellant; S. Hoda, S.C.,
Mihir Kumar Jha, J. C. to S. C. III, for the Respondent

Final Decision : Allowed

Judgement

S. B. Sinha, J.—In this writ petition, the orders as contained in Annexures "1" and "2" are in question. The facts of the case lie in a very narrow compass and are not much in dispute. The petitioners who were licensee for dealing in retail cloth business granted to them under the provisions of Bihar Trade Articles (Licences Unification) Order, 1984. An inspection was made in the business premises of the petitioners and thereafter a criminal case u/s 7 of the Essential Commodities Act, 1955 was instituted against them. The Subdivisional Officer, Araria, the licensing authority, by an order dated 11.8.86 directed that in view of the initiation of the aforementioned criminal proceeding against the petitioners, their licence being Licence No. 112A/85 be suspended. The petitioners thereafter, it appears, filed their show cause which is contained in Annexure "2" to the counter-affidavit. The aforementioned show cause was filed on 18.8.86.

2. The licensing authority, it appears, upon receipt of the aforementioned show cause sought for the opinion of the Government Pleader, Purnea and thereafter on the basis of the opinion of the Government Pleader, Purnea dated 20th January, 1987, passed an order dated 11.3.87 to the effect that till the disposal

of the aforementioned criminal case the licence of the petitioners shall continue to remain suspended.

3. Mr. N. K. Agrawal, the Learned Counsel appearing on behalf of the petitioners submitted that on a fair construction of sub-clauses (1) and (2) of clause 11 of the said Order, it will appear that when an order of interim suspension suspending the licence of a licensee is passed, the same can be done only when two conditions precedent therefor exist (1) that a proceeding for cancellation of licence must be pending or in contemplation (2) such suspension shall not exceed a period of 90 days. Mr. Agrawal submits that if any of these conditions does not exist and an order of suspension has to be passed in terms of sub-clause (1) of clause 11 of the aforementioned order, in that event, it is obligatory on the part of the licensing authority to give an opportunity of hearing to the licensee and only thereafter the order of suspension can be passed.

4. Mr. Mihir Kumar Jha, Learned Counsel appearing on behalf of the State, however, raised a novel question. He submitted that clause 11 of the aforementioned Order has to be read along with clause 13 thereof. He submitted that if a person is convicted by a court of law for the contravention of the Order, the licensing authority would by an order in writing cancel his licence and, in that view of the matter, when a criminal case has been instituted the licensing authority must be held to have the necessary power by necessary implication to suspend a licence pending decision of the criminal case. He submits that such a construction shall advance the cause of justice and in that view of the matter Clause 11 and Clause 13 should be so read so as to be held by this Court that a licensing authority has the necessary power to suspend a licence during the pendency of a criminal case. From a perusal of Clauses 11 and 13 of the said Order, it is evident that the same deals with absolutely different and distinct situations. In terms of clause 11 of the Order, a licence may be cancelled or suspended, if the licensing authority finds that the licensee has violated any provisions of the Order made u/s 3 of the Essential Commodities Act or a condition of licence issued thereunder. In such a situation, the licensing authority must call upon the licensee to state his case before him and on the basis of the materials placed, the licensing authority may or may not pass an Order cancelling or suspending a licence.

5. Clause 13 of the aforementioned order stands absolutely on a different footing. In such a situation, the order of cancellation of licence is automatic. In that case, the licensing authority does not have to apply his own judicial mind nor is he required to come to a definite finding on the basis of the materials placed before him as to whether the licensee has contravened provisions of any Order made u/s 3 of the Essential Commodities Act or has violated any condition of the licence. The order of conviction when passed as against the licensee must be passed on such a finding arrived at by a competent criminal court after complying with all the procedures required under the Criminal Procedure Code and/or the Essential Commodities Act. In such a situation, the findings of the

criminal court already exists and the statutes has conferred a duty upon the licensing authority to pass an order suspending the licence. The very word "Shall" used in Clause 13 of the Order suggests that in such a situation, the licensing authority has no other option but to cancel the licence. The aforementioned provision becomes absolutely clear also from reading the proviso appended to Clause 13 of the Order, inasmuch as when such order of conviction is set aside by any higher court then the licence automatically has to be restored. The first contention of Mr. Jha, therefore, fails. Mr. Jha thereafter submits that in view of the decision reported in the case of *Sawal Mal Choudhary & Others vs. the State Bank of India* (1986 PLJR 660) it must be held that the petitioners had an alternative remedy as against the order impugned in this case, namely, against the order dated 11.3.87, as contained in Annexure "1" to this application, the petitioners could have preferred an appeal in terms of Clause 28 of the aforementioned Order. The petitioners having not done so, are not entitled to any relief from this Court.

6. Upon a construction made of sub-clauses (1) and (2) of Clause 11 of the Order, in my opinion, it is absolutely clear that an order of interim suspension cannot be passed for a period beyond 90 days; nor such an order of interim suspension can be passed when no proceeding for cancellation of licence is pending or contemplated. The outer limit fixed by the legislative mandate for continuation of the order of interim suspension i. e. 90 days, renders the operation of such order becomes invalid immediately on the expiry of 90 days. From the 91st day, the licensee would be at liberty to carry on his business on the basis of the licences granted to him under the provisions of the aforementioned Order. Carrying on business is a fundamental right and such a fundamental right can be reasonably restricted by grant of a licence or by reasonably restricting the same otherwise. In view of the facts that legislature itself contemplated that in a given situation as mentioned in sub-clause (2) of Clause 11 of the Order, a licence can be suspended for an interim period of 90 days only, in my opinion, it was not permissible for the licensing authority to continue the order of suspension as is purported to be done by the order dated 11.3.87, as contained in Annexure "1" to this application. Such order is wholly illegal and without jurisdiction. It further appears that the aforementioned order dated 11.3.87, as contained in Annexure "1" to the writ application, it was passed on the basis of the opinion of the Government Pleader, Purnea. The authorities while passing an order of cancellation of licence or suspension of licence exercise a statutory power. Such power has to be exercised within the four corners of the statutes as also in the mode or manner prescribed therefor. The Government Pleader was not a statutory functionary and, therefore, any opinion which was received from the Government Pleader or any recommendation made by him was wholly uncalled for in the eye of law and, in that view of the matter, the order of the licensing authority becomes wholly illegal. Reference, in this connection may be made to the decisions reported in the case of *Commissioner of Police, Bombay v. Gordhandas Bhanji* (A. I. R. 1952

S. C. 16), in the case of Dr. Rabindra Nath Singh v. The State of Bihar & Others (1983 PLJR 92), as also in the case of Udayappan v. Government of Tamil Nadu [1983] I, Labour Law Journal 170]

7. So far as the contentions of the Learned Counsel appearing for the State to the effect that I should not exercise my jurisdiction under Article 226 of the Constitution in view of existence of an alternative remedy in concerned, in my opinion, is also devoid of any merit. It is new well settled that in view of various decisions of this Court, particularly the Division Bench decision of this Court in the case of M/s. Govind Sharan & Sons and others v. The State of Bihar and another (1983 BBCJ 5 : 1983 PLJR 26) that the licensing authority does not have an interim power of suspension (except as provided for by statute), the order as contained in Annexure "1" must be held to be wholly vitiated in law, as the same does not comply with and as has been held hereinbefore, to the mandatory provision of sub-clause (2) of Clause 11 thereof. It is also a well settled principles of law that when an order is passed by an authority wholly without jurisdiction, such an order becomes a nullity and as such non-est in the eye of law. An order which in by itself a nullity, the question of the same being cured by an appellate order does not arise. Reference, in this connection, may be made to a decision reported in the case of Chief Justice of Andhra Pradesh v. L. V. A. Dikshitula (A. I. R. 1979 SC 193).

8. Apart from the aforementioned grounds, it is also a well known principle of law that once a writ petition is admitted, the same could not be thrown out only on the ground that their exists an alternative remedy. Reference, in this connection, may be made to A. I. R. 1961 S. C. 1506 and 1977 S. C. 870 which has been relied upon by a Division Bench decision of this Court reported in the aforementioned case of M/s. Govind Sharan & Sons and others v. State Bank of Indias & another (1983 BBCJ 5): 1983 PLJR 26)

9. In the case of Bawa Gopal Das Bedi & Sons and others v. Union of India & Others (1982 Patna 152: 1983 PLJR 288.) also this Court has held that while an order is passed by an authority who has no jurisdiction to pass such an order, the question of directing the petitioner to take recourse to an alternative remedy does not rise.

10. In that view of the matter, this writ application must succeed and the orders as contained in Annexures "1" and "2 must be quashed.

11. Let, a writ of certiorari be issued accordingly. The petitioners shall also be entitled to cost which is assessed at Rs. 500/- (Rs. Five hundred) only.