

(1976) 08 PAT CK 0011

In the Patna High Court

Case No : Civil Writ Jur. Case No's. 2433 and 2434 of 1975

Ranglal Sah Mukhlal Sah and Another

APPELLANT

Vs

District Magistrate of Saran and Another

RESPONDENT

Date of Decision : 19-08-1976

Acts Referred:

Bihar Food Grains Dealers Licensing Order, 1967 — Section 3
Constitution of India, 1950 — Article 19, 301

Citation : AIR 1977 Patna 122

Hon'ble Judges : K.B.N. Singh, C.J;S. Ali Ahmad, J

Bench : Division Bench

Advocate : S.B. Sanyal, N.C. Ganguli and S.N. Mishra, for the Appellant; R.B. Mahto, G.P. No. 4 and Sachchidananda Jha, J.C. to G.A., for the Respondent

Final Decision : Dismissed

Judgement

S. Ali Ahmad, J.—These two writ applications have been heard together and are being disposed of by this common judgment as the points involved are the same. The petitioners in both the cases are firms holding wholesale foodgrains dealers' licence under the Foodgrains Dealers' Licensing Order, 1967 (hereinafter to be referred to as "the Licensing Order"), The prayer in both the two applications is to quash Annexure 4 dated 24th October, 1975 by which the licences granted to the petitioners were cancelled.

2. Admittedly the two petitioners held wholesale food grains dealers' licence under the Licensing Order, They claim that they were carrying on trade under the items specified in their licences. On 30th June, 1975, the District Supply Officer, respondent No. 2, asked the petitioners in both the cases to show cause as to why they were not taking interest in the business of wheat and as to why their food grains dealers' licence should not be cancelled. On receipt of this show cause notice, the petitioners filed their show cause on 21st July, 1975. The show cause filed by the two petitioners are identical and have been marked as Annexure 2 to these two writ applications. A perusal of the show cause filed by

the petitioners shows that small transaction in wheat was admitted. The petitioners, however, sought to justify the small transaction on account of non-availability of wheat from any place outside the State and restriction in its movement. Another reason for the short transaction was that the wheat production in the locality was "small". Thereafter on 28th July, 1975, the petitioners were served with another notice directing them to make 500 quintals of wheat available. It was said in the notice that in case they did not comply with the direction their licences would be cancelled. A copy of this notice has been marked as Annexure 3 to the two writ applications. The petitioners did not comply with the direction given in the notice dated 28th July, 1975, instead they filed explanations stating that it was not possible for the reasons given therein to make 500 quintals of wheat available in their stock. A copy of the explanation has been marked as Annexure 3 (a) to the two writ applications. Thereafter respondent No. 2 informed the petitioners by his notice dated 24th October, 1975, that respondent No. 1 had cancelled their wholesale dealers' licence.

3. The petitioners instead of filing appeal under Clause 9 of the Licensing Order came direct to this Court challenging the validity of the order cancelling their licence. In support of the applications Mr. Sanyal strenuously urged that the direction to make 500 quintals of wheat available for sale was without jurisdiction and, as such, non-compliance with the direction could not authorise the respondent to cancel the wholesale dealers' Licence of the petitioners. Learned counsel further submitted that the licence could be cancelled under Clause 7 of the Licensing Order only when the terms and conditions of the licence were contravened by the licensee or by any other person acting on behalf of the licensee. He further urged that the terms and conditions of the licence did not authorise the licensing authority to direct the two petitioners to make any quantity of wheat available in their stock for sale. In view of the submission advanced by Mr. Sanyal, it becomes necessary to examine the terms and conditions of the licence granted to the petitioners. The terms and conditions of the licence for carrying on business of wholesale dealers in foodgrains are contained in Form B, the licence itself. For our purpose condition No. 10 only is relevant and it will be useful to quote it:--

"10. The licensee shall comply with any direction that may be given to him by State Government or the licensing authority in regard to purchase, sale and storage for sale, of foodgrains and in regard to the language in which the register, returns, receipts or invoices mentioned in paragraphs 3, 4 or 8 shall be written and the authentication and maintenance of the register mentioned in paragraph 3."

A perusal of condition No. 10 makes it unmistakably clear that the State Government or the licensing authority can issue direction with regard to purchase, sale and storage for sale of foodgrains. Admittedly wheat was one of the items covered by the licence. The District Magistrate, who is the licensing authority, therefore, was competent to issue directions asking the petitioners to

make wheat available for sale. That being so non-compliance of condition No. 10, in my view, contravened the terms and conditions of the licence within the meaning of Clause 7 of the Licensing Order. This argument, therefore, fails.

4. Mr. Sanyal alternatively argued that even if it be held that under condition No. 10, the District Magistrate was competent to make directions regarding purchase of foodgrains, the direction to make available 500 quintals of wheat was bad. In support of this argument, he invited our attention to the definition of "wholesale dealer" which is as follows:--

" "Wholesale dealer" means a person including a rice/flour miller (chakki owner) engaged in the business of purchase, sale or storage for purpose other than personal consumption of one or more kinds of foodgrains in a quantity exceeding one hundred quintals but not exceeding two thousand five hundred quintals at any one time and includes any person, doing so, on behalf of another as a commission agent or Arhtia or otherwise."

According to learned counsel a wholesale foodgrains dealer could not be compelled to deal in a quantity exceeding one hundred quintals. He submitted that the petitioners had no capacity to purchase 500 quintals of wheat. But, according to learned counsel, in view of condition No. 10, the licensing authority could at best direct them to purchase 100 quintals, the minimum required for being a wholesale dealer. It is not possible to accept this argument. The licensing order has been framed u/s 3 of the Essential Commodities Act, 1955. The Essential Commodities Act, as the preamble shows, was enacted in the interest of general public for the control of the production, supply and distribution of, and trade and commerce in certain commodities. The provisions of the licensing order, therefore, have to be construed in a way which is beneficial to the general public rather than to the licensees or individuals. It is not unknown that traders sometimes manipulate prices. A provision, therefore, has to be made to check artificial price rise effectively in the interest of general public. According to the definition, a wholesale dealer is one who is engaged in the business of purchase, sale or storage for the purpose other than personal consumption of one or more kinds of foodgrains in a quantity exceeding hundred quintals but not exceeding two thousand five hundred quintals at any one time. It must, therefore, be construed that by obtaining a licence for wholesale foodgrains dealer, the petitioners agreed to keep in stock foodgrains upto 2500 quintals if so directed by the State Government or by the licensing authority. To hold otherwise will amount, in my view, to help the traders to keep foodgrains in short supply and cause difficulty to general public.

5. Mr. Sanyal on the authority of the decision in the case of Raj Kumar Singh Vs. Authority under Payment of Wages Act and Another, urged that the petitioners have a right not to do business at all and, therefore, the direction to make available by purchase of 500 quintals of wheat was violative of Article 19 of the Constitution of India. Apart from the fact that operation of Article 19 of the Constitution has been suspended during the emergency, this point has no

substance. It is true that the petitioners cannot be compelled to do any particular business but in these two cases the petitioners were doing business on the strength of the wholesale foodgrains dealers' licence granted to them. While doing business they had to abide by the terms and conditions of the licence. As I have said above, condition No. 10 empowered respondent No. 1 to issue direction. The direction, I have also held above, was legal and justified. Therefore, while availing of the advantages under the licence, the licensee petitioners could not have legitimately refused to comply with the directions on the ground that they had right not to do business at all.

6. At the end, Mr. Sanyal faintly urged that the direction to make available 500 quintals of wheat was unreasonable and was violative of Article 301 of the Constitution of India. It is not possible to accept this argument either. The direction to make available 500 quintals of wheat was with a view to remove scarcity of foodgrains in the area and was not at all unreasonable. The direction, therefore, cannot be said to be violative of Article 301 of the Constitution of India or of any other Article under Part XIII of the Constitution of India.

7. While stating the facts of the case, I have said that the petitioners instead of filing appeals under Clause 9 of the Licensing Order, have come up to this Court directly. It would have been better if the petitioners filed appeal as prescribed under Clause 9 of the Licensing Order. The appellate authority could then look into the fact as to whether non-compliance of the direction was deliberate or not. In case the appellate authority was of the view that the compliance with the direction was beyond the capacity of the petitioners, it could have given them relief. It is not possible for us to examine as to whether the petitioners really were not capable of complying with the direction. The petitioners, therefore, if they are so advised, may file appeals under Clause 9 of the Licensing Order accompanied with a petition to condone the delay. In case such appeal or appeals are filed the appellate authority will dispose them of in accordance with law and in the light of the observations made above.

8. In the result, both the applications are dismissed; but without costs.

K.B.N. Singh, C.J.

9. I agree.