

(1991) 01 PAT CK 0028

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 8435 of 1990

Sachindra Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 28-01-1991

Acts Referred:

Citation : (1991) 01 PAT CK 0028

Judgement

1. The petitioner, a fair price shop dealer, has moved this Court for quashing an order dated 9th January, 1990 (Annexure-4), by which the Sub-Divisional Officer, Biharsharif, Nalanda, has suspended the supply of commodities to his fair price shop for distribution and sale in view of the pendency of criminal case u/s 7 of the Essential Commodities Act against him.

2. The petitioner is a licensee under the Bihar Trade Articles (Licences Unification) Order, 1984 (hereinafter referred to as the "Order"). His licence under order has neither been cancelled nor suspended, as would be evident from Annexure-4. It is needless to say that the petitioner has, therefore, right to carry on trade and business in the commodities referred to in his licence de hors as a fair price shop dealer.

3. It is now well settled that a licence can neither be suspended nor cancelled for pendency of any criminal case u/s 7 of the Essential Commodities Act since allegations do not amount to contravention of the terms and conditions of the licence "See Karpoori Thakur Vs. State of Bihar and Another, and Swami Distributors v. State of Bihar 1990 PLJR 210. Under Unification Order, a licence cannot be suspended for more than three months in a case where an inquiry under Clause 11 of the Order is undertaken for contravention of the terms and conditions of the licence. In the event, contravention of the terms and conditions of the licence is proved, the licence could be suspended or cancelled in relation to the article to which the contravention relates.

4. So far as the status of a fair price dealer is concerned, he has to be a licensee under the Order. On execution of the agreement with the Government, he is

appointed as a fair price shop dealer to distribute and sell commodities at a price fixed by the Government. In short, he acts as an agent of the Government and for that he is given quotas of commodities for sale and distribution to the persons attached to the shop.

5. From the facts stated in the writ petition as well as on perusal of the first information report (Annexure-1), it appears that the allegation of contravention by the petitioner relates to some excess bags of sugar allegedly found in his house qua the stock register. By the impugned order (Annexure-4), the Sub-Divisional Officer directed stoppage of supply and allocation of all commodities to him in view of the pendency of the criminal case u/s 7 of the Essential Commodities Act against him.

6. In the matter of issuing quota or licence or granting other forms of largess, the Government cannot act arbitrarily at its sweet-will, but its action must be in conformity with the standard or norms which is not arbitrary, irrational or irrelevant. The discretion of the Government in the matter or grant of quotas must be confined and structured by rational, relevant and non-discriminatory standard or norms : See *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, .

7. Learned Counsel for the petitioner, therefore, submits if the State authority is incompetent to take any action of cancellation or suspension of a licence merely because of the pendency of a criminal case u/s 7 of the Essential Commodities Act, and even for that matter, the allegation of contravention of the terms and conditions of the licence when proved against one commodity, results in cancellation of the licence with respect to the said article only; is the impugned action suspending the quotas of all commodities for an alleged irregularity in his dealing in sugar could be founded on any valid principle which is not arbitrary, irrational, unreasonable or discriminatory. Mr. Rafat Alam appearing on behalf of the State submitted that the analogy of Clause 11 of the Order will not apply to a case where a person is appointed as a fair price shop dealer under an agreement. It is the discretion of the State Government either to allot him commodities or not to do so for distribution. It is a matter of confidence of the State.

8. On consideration of the arguments of the learned Counsel for the parties, we find that the petitioner is deprived of his livelihood without any ceremony. The pendency of a criminal case u/s 7 of the Essential Commodities Act if no contravention of the terms and conditions of the licence under the order. Further, contravention with respect to one commodity cannot lead to cancellation of licence with respect to other commodities. In this background, the rationality of the impugned order has to be adjudged.

9. Administrative powers must be exercised fairly. Doing of an act fairly and objectively is contrary to the concept of arbitrariness. The rules of fairness are not cut and dried. They vary infinitely. A democratic Government cannot lay

down arbitrary and capricious standards for the choice of persons with whom alone it will deal : See V. Punnan Thomas v. State of Kerala AIR 1969 Kerala 18 (Full Bench). The State may or may not enter into any contract with any one, but if it does so, it must do so fairly, and without discrimination and without unfair procedure, and this position would hold good in all cases of dealing by the Government with the public where the interest sought to be protected is a privilege. We are, therefore, of the opinion that if under the statutory provisions of the Essential Commodities Act, such action could not have been taken with respect to the licence of the petitioner dealing in essential commodities the action of the Government to suspend grant of quotas of all commodities on a mere allegation of irregularity does not appear to be rational.

10. The loss of confidence pleaded on behalf of the learned Counsel for the State, without providing any opportunity to the fair price shop dealer as to the alleged irregularity, is that of acting like an individual in selecting the recipients for its largess, which cannot be the norms or standard for a Government or for an instrumentality of a Government, Under the Unification Order, suspension of the licence by way of punishment must comply with the principles of natural justice and the interim suspension during the pendency of contravention proceeding cannot continue for more than ninety days.

11. The criminal case u/s 7 of the Essential Commodities Act will take years to conclude and attain finality. The petitioner is visited with civil consequences for an indefinite period.

12. Principles of natural justice embrace Government contract as well See Kumari Shrulekha Vidyarthi and Ors. v. State of Uttar Pradesh and Ors. 1990 (3) SCJ 336 and the case of Raghunath Thakur v. State of Bihar and Ors. 1989 PLJR 17 (SC) : 1989 SCR 229. The petitioner was entitled to some opportunity at least to show that the allegations alleged against him are not true. Suspension of supply of quotas for an indefinite duration, without any ceremony whatsoever, smacks arbitrariness and absence of fair play.

13. Accordingly, we direct the respondents to issue show cause to the petitioner within a month from the date of receipt of this order, giving him an opportunity to represent his case, and after objective consideration of the show cause, pass reasoned order one way or the other. The entire procedure must be completed within three months of the receipt of this order.

14. With the aforesaid direction and observation this writ petition is disposed of.