

(2020) 07 PAT CK 0080

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5675 Of 2020

Yadunanadan Paswan

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 07-07-2020

Acts Referred:

Citation : (2020) 07 PAT CK 0080

Hon'ble Judges : Partha Sarthy, J

Bench : Single Bench

Advocate : Sanjeev Kumar Mishra, Dev Kumar

Final Decision : Allowed

Judgement

Heard learned counsel for the petitioner and learned Ac to GP-2 for the respondent State.

The petitioner has filed the instant writ application for quashing the order dated 15.2.2020 issued under the signature of the Sub-divisional Officer, Paliganj whereby the PDS licence bearing no. 226/16-17 of the petitioner was cancelled, to restore the said licence and for other reliefs.

As per the case of the petitioner, the petitioner is a PDS licence holder bearing licence no. 226/16-17. A written statement was filed by the Block Supply Officer, Bikram addressed to the Officer-in-charge, Bikram Police Station alleging therein that a truck was intercepted with wheat and rice thereon and as per the statement given by the driver, the same had been brought from the PDS shop of the petitioner. It is stated that no adverse material came against the petitioner in the investigation. By order contained in memo no. 23 dated 30.10.2019 (Annexure-1) the licence no. 226 /16-17 of the petitioner was suspended with immediate effect. A copy of the said order was sent to the petitioner along with a photocopy of the FIR with a direction to submit his show cause reply within two weeks with respect to the irregularity mentioned in the FIR. The petitioner filed his reply dated 10.1.2020. By order dated 15.02.2020 (Annexure-3) passed by

the Sub-divisional Officer, Paliganj the licence of the petitioner was cancelled.

It is submitted by learned counsel for the petitioner that the basis of the order of suspension dated 30.10.2019 is the FIR registered against him. Referring to clause 28 of the Bihar Targeted Public Distribution System (Control) Order, 2016 (hereinafter referred to as 'the Control Order, 2016'), it is submitted that as per instructions, this petitioner having never been sent to jail, the order of suspension of licence as contained in Annexure-1 was illegal. It has further been submitted that the order of suspension as contained in Annexure-1, was the only notice issued to the petitioner prior to the order of cancellation, impugned herein. It is submitted that from perusal of the said notice it would transpire that it does not ask the petitioner to file his reply against the 'proposal for cancellation' as required under clause 27 of the Control Order, 2016. It is thus submitted that the same being in teeth of clause 27(ii) of the Control Order, 2016 as also the division bench judgment of this Court in the case of Ram Bachan Ram Vs. State of Bihar (2018 (4) PLJR 516 (DB)) the order of cancellation as contained in Annexure-3 should be set aside and the licence of petitioner be restored.

On the other hand, it has been submitted by learned AC to GP-2 appearing for the State that the case of the petitioner is distinguishable from the judgment in the case of Ram Bachan Ram (supra) being relied upon by the petitioner. It is submitted that from perusal of the notice as contained in Annexure-1, it would transpire that the same was given under clause 28 of the Control Order, 2016 and clause 28 of the Control Order enables the authority to take lawful action. Further reference is made to clause 25 of the Control Order, 2016 to submit that in view of the order passed by the Hon'ble Supreme Court, action shall be taken against the licensee in the circumstances mentioned in the said clause.

Having heard learned counsel for the parties, the facts which are not in dispute are that the order of suspension as contained in memo no. 23 dated 30.10.2019 (Annexure-1) asking the petitioner to file his show cause within two weeks with respect to the irregularity mentioned in the FIR was the only notice given to the petitioner prior to the order of cancellation. Clause 27 of the Control Order, 2016 is the only clause which deals with cancellation of licence. Clause 27(ii) is being quoted herein below for ready reference:

"27. Cancellation of License:

(i)

(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."

The above clause 27(ii) clearly talks of sufficient opportunity to be given to the petitioner against the proposal of cancellation of his license. The interpretation of this clause was the subject matter in the case of Ram Bachan Ram (supra)

wherein the Hon'ble Division Bench observed as follows:

"6. Even though, the respondents have filed a counter affidavit and have tried to justify the action, we find that under sub-clause (ii) of Order 27 of the Control Order, 2016, it is clearly stipulated that no order of cancellation of a licence shall be made until the licensee has been given sufficient opportunity to state his case against the proposal of cancellation. The words, 'proposal for cancellation' appearing in the statutory provision clearly contemplates that when the show cause notice is issued, licensee should be categorically informed that there is 'proposal for cancellation of licence' and show cause notice issued as to why licence should not be cancelled. In the show cause notice issued to the petitioner, apart from the fact that there is no such proposal indicated asking him to show cause as to why licence should not be cancelled, we find that on the second ground also, the impugned action is not sustainable"

This Court was pleased to allow the appeal, quash the order passed by the learned Writ Court, quash the cancellation order and directed for restoration of licence of the petitioner therein.

In the instant case also admittedly, the show cause notice issued to the petitioner together with the order of suspension, as contained in Annexure-1 contains no proposal asking the petitioner to show cause as to why his licence should not be cancelled. Thus, the order of cancellation is not sustainable in view of the same being in violation of the requirement as contained in clause 27(ii) of the Control Order, 2016 as also in the teeth of the judgment in the case of Ram Bachan Ram (supra). Thus, in view of the facts and circumstances of the case, the order dated 15.2.2020 issued under the signature of the Sub-divisional Officer, Paliganj cancelling the licence of the petitioner is quashed. The PDS licence no. 226/16-17 of the petitioner is directed to be restored.

However, liberty is granted to the respondents to take action afresh against the petitioner in accordance with law, if so advised.

The writ petition stands allowed.