

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8552 of 1998

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Dinesh Sharma s/o Sri Kapil Deo Singh resident of village Bana, P.S. Khizarsarai,
District Gaya. Petitioner/s

Versus

1. The State of Bihar.
2. The Collector, Gaya.
3. The Sub-Divisional Officer, Sadar, Gaya.
4. The Assistant District Supply Officer, Sadar Gaya, Gaya..... Respondent/s

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Appearance :

For the Petitioner/s : Mr. None.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date: 24-02-2015

Shivaji Pandey,J

No one appears for the petitioner and the State.

In this case, petitioner is challenging the order dated 28th October 1997 assed by the District Magistrate and Collector, Gaya in Misc. Application No. 62 of 1997(Annexure-5) whereby he affirmed the order dated 5th February 1997 (Annexure-4) passed by the Sub-divisional Officer, Sadar, Gaya whereby and whereunder the licence of the petitioner was cancelled.

The facts of the present case is that the petitioner was given licence of Public Distribution System vide Licence No. 7 of 1990 which was renewed from time to time.

On 28th December 1996, the Assistant District Supply Officer, Gaya, Respondent no.4 made an enquiry at 1.30 hours where 20-25 persons of general caste and members of the Scheduled Caste comprising 30-40 women made complaint that they were receiving K. oil and sugar regularly but once in four months. They made oral complain, whenever they approached the petitioner for aforesaid commodities, he used to refuse and return back them with filthy language and it has been complained that the petitioner was not a resident of

village Raunia but was resident of village Bana whereupon a show cause notice was issued, asked the petitioner to file explanation by 5th January 1997, if no show cause is received, it would be presumed, the petitioner has nothing to say, for cancellation of licence proceeding would be initiated. It was also directed that to produce the stock register, sale register and receipt along with the show cause.

On receipt of the show cause, petitioner denied the allegation and has taken a plea that he used to supply the aforesaid commodities. Complain has been made against him by some interested persons and the fact of non-supply can be verified from dignitaries of the village.

The Sub-divisional Officer, Sadar, Gaya considered the show cause of the petitioner, vide Memo No. 89 dated 5th February 1997 passed the order of cancellation of his licence recording that the petitioner was not distributing K. oil and sugar to the members of the weaker section and also recorded that the petitioner did not give any reply to one of the allegations mentioned in the show cause.

Being aggrieved by the order of the Sub-divisional Officer, petitioner filed an appeal before the District Magistrate cum-Collector taking a plea that the allegations made against him of not distributing the aforesaid commodities regularly is completely incorrect and has stated that some interested persons of a particular class in order to remove him from PDS dealership connived together and made complaint against him.

The Collector considered the plea/defence of the petitioner and found that the finding recorded by the Sub-divisional Officer is not illegal and refused to interfere with the order.

Counsel for the petitioner submitted that the Sub-divisional Magistrate did not follow the provisions of Bihar Trade Articles (Licenses



Unification) Order, 1984 (for short, the 'Unification Control Order') and cancelled the licence of the petitioner illegally as the notice issued by the Sub-divisional Officer dated 30th February 1996 does not show that the petitioner was served the show cause in terms of Cl.11(2) of the Unification Control Order so much so the show cause has not been issued properly and as such, the order of cancellation of his licence is per se illegal, relied on the judgment reported in 2011(2) PLJR 698 (Kamta Singh v. State of Bihar).

He has further argued that the impugned order passed by the SDO shows that he has relied on the statements of certain complainants who were examined during the enquiry have not been mentioned in the show cause and as such, it is an additional charge against the petitioner in the order of cancellation that cannot be a basis for cancellation of his licence. He has relied on the judgment reported in 1972 PLJR 104 (S.O. & F.M. v. State) so much so he has further taken a plea that as it appears from the show cause during the enquiry statement of certain complainants were recorded by the Assistant District Supply Officer but the statement recorded by him was never served upon the petitioner so much so the enquiry report which was basis for initiation of cancellation of licence was also not served upon the petitioner and has claimed that in such a situation non-service of enquiry report as well as the statement recorded during the enquiry makes the order of the SDO cancelling the licence is completely illegal. Reliance has been placed on the judgment reported in 2013(3) PLJR 249 (Krishna Kumar Srivastava v. State of Bihar) and further asked that the appellate authority without considering the materials on the record abruptly rejected the appeal by a cryptic order as the proceeding of the appellate authority is a continuation and co-extensive to the proceeding of original court, as such, the appellate authority was obliged to examine the case of the petitioner objectively

but instead the appellate authority has misdirected himself and rejected the appeal by a cryptic order.

Counsel for the State has refuted the argument of the petitioner and submitted that the notice of show cause was served upon the petitioner in terms of Clause 11(2) of the Unification Control Order. There is no additional charge mentioned in the final order of the SDO, that of the show cause, merely he has recorded the names of some complainants, cannot be said to be additional charge and the show cause itself states about the complaint made by the local people so much so, that the appellate authority has not committed any error, as he has affirmed the order of the SDO, in case of affirmance, there is no need to record a separate finding, apart from the order of trial court. He has further submitted that it was not like a departmental proceeding, rather it was administrative enquiry was conducted about the conduct of the petitioner, in such a situation there was no need to serve the copy of the enquiry report as well as the statement recorded by the Assistant District Supply Officer.

Having considered the rival contentions of the parties, the show cause issued by the SDO itself comprises the statement of beneficiary of the essential commodities where it has specifically mentioned that he was not supplying the K. oil and sugar regularly rather once in 3-4 months to the people of the locality. It also appears that the petitioner was asked to file show cause by 5th January 1997, in failure, matter would proceed further.

As this Court is of the view that the SDO has issued show cause in terms of clause 11(2) of the Unification Order. The judgment relied on by the petitioner reported in the case of Kamta Singh (supra) is not applicable to the facts of this case as in that case the Court recorded that the show cause was not given in terms of Clause 11(2) of the Unification Order. Hence, this point raised

by the petitioner is not sustainable.

The 2nd point with regard to additional charge has been mentioned in the final order of the SDO over and above mentioned in the notice about the recording of statement of Phulbasi Devi wife of Jamun Manjhi and wife of Mungeshwar Kahar who have made allegation of non-supply of aforesaid commodities is there in the notice except names of complainant. This cannot be said to be additional charge apart from mentioned in the show cause notice and as such, the judgment relied on S.O. & F.M. case (supra) is not applicable to the present case.

In the present case one of the ground has been taken that the appellate authority has not passed order in accordance with law on the ground that he has not dealt with the case in any manner but recorded a very cryptic finding and rejected the appeal.

The petitioner is right in that context that the appellate authority while exercising power of appeal was required to examine the case of petitioner on facts and law as it has co-extensive power to trial court. He cannot evade and avoid to deal with the facts and ground mentioned in the appeal by merely recording that he could not find any error in the order of the SDO as cryptic and mechanical order passed by the appellate authority has not been approved by this court as well as by the Hon'ble Supreme Court. In such view of the matter, the order of the appellate authority is not sustainable.

But it is not the end of the matter. As the petitioner has made a complaint that he was not served the copy of enquiry report of Assistant District Supply Officer and the statement of allegation of certain persons, though he has not made complaint either before the appellate authority or before the SDO but he has taken a plea before this Court for the first time. In view of the judgments

reported in 2013(2) PLJR 706 (Brahmdeo Rai v. State of Bihar) and 2013(3) PLJR 249 (Krishna Kumar Srivastava v. State of Bihar), this Court holds if the authority places reliance of an enquiry report and the statement recorded during enquiry, obligation lies to the licensing authority to supply the same to the petitioner before passing the order of cancellation of licence.

In the present case, admittedly neither statement of complainant nor enquiry report was served upon the petitioner while passing the impugned order by the SDO. The order passed by the District Magistrate and the order of the SDO are quashed and the matter is remanded back to the SDO who will decide the case afresh, after supplying the statement of complainant and the enquiry report and after giving opportunity of hearing to the petitioner in accordance with law.

Accordingly, this petition is allowed.

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(Shivaji Pandey, J)