

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.932 of 2014

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1. Ram Gopal Rai Son of Suraj Rai Resident of Village - Pakaria, P.S. Sonbarsa, District - Sitamarhi

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary Food And Civil Supply
2. District Magistrate, Sitamarhi
3. Sub Divisional Officer, Sadar Sitamarhi
4. Block Development Officer, Sonbarsa, Distt. - Sitamarhi

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Yogendra Mishra, Adv.
Mr. Binod Kumar , Adv.

For the Respondent/s : Mr. Kuber Pathak A.C. to S.C. 14

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

3 23-06-2015 Heard Mr. Yogendra Mishra learned counsel for the petitioner and Mr. Kuber Pathak A.C. to S.C. 14 for the State.

The petitioner is aggrieved by the order dated 20.11.2013 passed by the Sub Divisional Officer-cum-Licensing Authority whereby the licence of the petitioner for running a public distribution shop bearing License no. 52 of 2007 has been cancelled.

Facts of the case briefly stated is that upon the directives issued by the District Magistrate, Sitamarhi that certain inspections were carried out and when certain irregularities have been found in the fair price shop of the petitioner. The charges are based upon an inspection carried out by the Block Development Officer, Sonbarsa on 9.9.2013 and charges the petitioner on following grounds:

(a) The shop was found closed at 9.20 A.M.

(b) The petitioner had distributed 9 kilos of wheat and 13 kilos of rice

one month earlier and was not making distribution presently.

(c) The consumers were being supplied 2.75 litres of kerosene at Rs. 51/- per litres. The petitioner was thus charged with making supplies at a higher price.

A show cause notice was issued which is placed at Annexure-1 and it was responded to by the petitioner. The reply filed by the petitioner has been rejected by the licensing authority by the impugned order passed on 20.11.2013 on grounds of not being satisfactory and in view of a judgment of the Supreme Court rendered in Civil Appeal No. 196 of 2001 that the licence has been cancelled.

Mr. Mishra learned counsel for the petitioner has submitted that the allegations are vague and the copy of the enquiry report which is foundation for the impugned order, was never supplied with the petitioner.

A counter affidavit has been filed and in which a stand has been taken by the licensing authority in paragraphs 7 and 16 that there is no provision to supply the enquiry report.

I have heard learned counsel for the parties and I have perused the material on record.

The impugned order simply rejects the reply filed by the petitioner on grounds of not being satisfactory while upholding the charges. The statement made in the counter affidavit that the enquiry report which is the foundation for the show cause is not required to be served on the petitioner reflects lack of legal understanding. Where the charge memo rests on the enquiry report then the authority concerned is duty bound to supply the same to the delinquent failing which the proceedings stands infracted.

The allegations apparently are vague in as much as there is no specific

instance mentioned nor the names of the consumers who have made any such complaint against the petitioner in this respect finds mention. The allegations are not specific and are rather vague. The charge memo being vague, the order of cancellation is based on no evidence and has been passed in a mechanical manner relying upon a Supreme Court judgment.

An order of cancellation is a quasi judicial exercise and has to be performed in the manner required more particularly where it results in civil consequences. The order of cancellation is non- speaking and does not reflect any application of mind nor discusses any evidence on which it rests.

For the reason that the charges are vague; the order of cancellation is mechanical in nature; the evidence is missing and the order is non speaking, the order of cancellation dated 20.11.2013 passed by the Licensing Authority impugned at Annexure-3 of the writ petition cannot be upheld and is accordingly set aside. The licence of the petitioner is restored. The writ petition is allowed.

(Jyoti Saran, J)

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