

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1058 of 2015

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1. Suresh Prasad Son of Late Bishwanath Prasad Yadav Resident of Village
- Dharampur, P.S. - Fatehpur, District - Gaya.

.... Petitioner/s

Versus

1. The State of Bihar through Collector, Gaya.
2. The SDO, Sadar, Gaya.
3. The BSO, Gaya.,

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vijay Anand, Adv.

For the Respondent/s : Mr. Vivek Anand, A.C. to G.P.21

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

3 08-05-2015 Heard Mr. Vijay Anand, learned counsel for the petitioner
and Mr. Vivek Anand, learned A.C. to G.P.21 for the State.

The petitioner is a licence holder under the Public Distribution System Control Order, 2001 as enforced in the State of Bihar vide Fair Price Shop Order, 2007 (hereinafter referred to as 'the Control Order') bearing Licence No. 2 of 1989(old) and 23 of 2007(new). The licence of the petitioner has been cancelled under the order of the Licensing Authority-cum-Sub Divisional Officer, Sadar Gaya vide order passed on 21.5.2008 and has been affirmed by the appellate authority when the Supply Appeal No. 11 of 2014 filed by the petitioner has been dismissed on 27.11.2014 by the District Magistrate, Gaya. The orders impugned are placed at Annexures- 3 and 5 respectively.

The following issues have been raised by Mr. Vijay Anand, learned counsel for the petitioner to question the impugned orders.

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- (a) Although the cancellation orders entirely rests upon an enquiry conducted by the Executive Magistrate, Sadar Gaya and the Block Supply Officer, Gaya on 28.3.2008 when they are stated to have found the alleged irregularities which finds mention in the show cause notice placed at Annexure-1 but the copy of such enquiry report has not been supplied to the petitioner and a specific statement to such effect made in paragraph 22 of the writ petitioner has gone unresponded in the counter affidavit.
- (b) The charges are vague for it gives no details of the irregularities committed nor mentions the names of the complainants.

Although a counter affidavit has been filed by the respondents reiterating the allegations set out against the petitioner but as I have said the respondents are silent as regarding service of enquiry report on the petitioner.

It is a matter of record that not only the show cause notice but also the order of cancellation and its affirmation totally rests upon the enquiry report of the Executive Magistrate and the Block



Supply Officer and the allegations which are founded on the enquiry report are bereft of descriptive details. A vague allegation can only be responded in a general manner and which duty has been duly discharged by the petitioner. The show cause reply of the petitioner has been held to be unsatisfactory by the Licensing authority but then the charge itself is non descriptive and does not specify the allegation.

This Court has been noticing in a number of cases that although an order of cancellation is resting upon an enquiry report but neither the copy of the enquiry report is provided to the licence holder nor is he confronted by the name of the complainants nor the allegations are specific. All these lacunae prejudices the licence holders from defending themselves in a purposeful manner.

A proceeding under Clause 7 of the 'Control Order' is in a nature of a quasi judicial proceeding and though is to be disposed of in a summary manner but the principles of natural justice have to be necessarily followed. Until such time that a licence holder is confronted with specific allegations which are backed with supportive evidences and in case the initiation of proceeding is on the basis of an enquiry whether confidential or with notice, then unless a copy of such report is handed over to him with reasonable

opportunity to defend which in no event would mean 3 days, the statutory authorities cannot reject his reply on grounds of not being satisfactory. A proceeding of cancellation of licence is not an empty formality nor can be permitted to be conducted in a casual manner based on personal satisfaction.

Since a specific plea of the petitioner that the enquiry report was not served on him remains uncontested and even the allegations set out in the show cause notice is utterly vague and based on no evidence, the cancellation order as well as its affirmation cannot be upheld.

In consequence, the order dated 21.5.2008 passed by the Licensing authority as well as the order of the appellate authority dated 27.11.2014 as contained in Annexures- 3 and 5 respectively cannot be upheld and are set aside. The writ petition is allowed. The licence of the petitioners stands restored.

This order will not preclude the licensing authority to proceed afresh but in accordance with law bearing in mind the observation of this Court made hereinabove.

Bibhash/-

(Jyoti Saran, J)

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