

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20803 of 2014

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Arun Kumar Sah, aged about 50 years, Son of Late Ram Sagar Sah, resident of Village-Sherpur, Chhatwara-P.S.-Mahuya, District-Vaishali

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Department of Food, Supply and Consumer Protection, Government of Bihar, Patna.
2. The Principal Secretary, Department of Food, Supply and Consumer Protection, Government of Bihar, Patna.
3. The District Magistrate, Vaishali.
4. The Sub-Divisional Officer-Cum-Licensing Authority Mahua, Vaishali.
5. The Assistant District Supply Officer, Mahua, Vaishali.
6. The Block Supply Officer, Mahua, Vaishali

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Anand Kumar Ojha, Advocate.

For the Respondent/s : Mr. Sheo Shankar Pd.-S.C.-10

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

2 21-05-2015 Heard Mr. Anand Kumar Ojha, learned counsel for the petitioner and Mr. Anil Kumar learned, Assisting Counsel to Standing Counsel No.10 for the State.

The petitioner is a licensee under the Public Distribution System (Control) Order (hereinafter referred to as 'the Control Order') bearing Licence No. 66/2007 and is aggrieved by order contained in Memo No. 532 dated 25.09.2014 passed by the Licensing Authority-Cum-Sub-Divisional Officer, Mahua, District-Vaishali placed at Annexure-1, whereby the licence of the petitioner has been cancelled.

Mr. Ojha has assailed the order of cancellation on the following grounds:

(a) The notice bearing memo no. 432 dated 14.8.2014, placed at Annexure-2 is not a notice against proposed cancellation;

(b) The show cause notice dated 14.8.2014 having been responded by the petitioner on 08.09.2014, there was no adjudication; and

(c) That the order of cancellation relies upon a joint inspection report of the District Supply Officer and the Block Supply Officer, Mahua but the same was never handed over to the petitioner.

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

Although a counter affidavit has been filed but the issues raised, remain unanswered. Annexure-2 is a show cause notice dated 14.08.2014 but it merely requires the petitioner to clarify on the allegations. The show cause notice is not a notice against proposed cancellation as mandated under Clause 7(ii) of 'the Control Order'. Even when the show cause notice dated 14.08.2014 was responded by the petitioner vide Annexure-3, the same has not been adjudicated rather the Licensing Authority-Cum- Sub-Divisional Officer, Mahua has proceeded to order for cancellation of licence of the petitioner relying on joint inspection report, a copy of which was never handed over to the petitioner.

Though a forum of appeal is available to the petitioner under Clause-15 of 'the Control Order' but considering that the order of cancellation is in violation of the statutory provisions, this Court is persuaded to interfere with the order at this stage itself.

Admittedly, there is no show cause notice against proposed cancellation nor the inquiry report, which is the foundation for the cancellation as has been handed over to the petitioner. The order impugned thus is not only in violation of principles of natural justice rather the order of cancellation has been passed in violation of the statutory prescriptions as found in Clause 7 (ii) of 'the Control Order' which mandates a notice against proposed cancellation.

On these infirmities, the order of cancellation cannot be upheld and is accordingly set aside.

The writ petition is allowed.

The licence of the petitioner is restored.

This order however would not preclude the Licensing Authority to proceed against the petitioner in accordance with law.

(Jyoti Saran, J.)

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