

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13687 of 2014

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Sri Nivas Kumar son of Late Mahadeo Lal, resident of village Saidpur, P .S.
Mansi, District- Khagaria.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Civil and Food
Supply Department Government of Bihar, New Secretariat, Patna.
2. The Divisional Commissioner, Munger.
3. The Collector, Khagaria.
4. The S.D.O., Khagaria.
5. The District Food Supply Officer, Khagaria.
6. The Block Food Supply Officer, Mansi, Khagaria.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Hare Krishna Prasad, Advocate

For the Respondent/s : Mr. Prashant Pratap, GP-6

Mr. Deo Kumar Pandey, AC to GP-6

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

3 30-06-2015 Heard Mr. Hare Krishna Prasad, learned counsel

appearing on behalf of the petitioner and Mr. Deo Kumar Pandey,

Assisting counsel to G.P.-6 for the State and Mr. Shailendra

Kumar for the Bihar State Food and Civil Supplies Corporation.

The petitioner has prayed for issuance of writ in the
nature of certiorari for quashing the order dated 3.6.2014 passed
by the Collector, Khagaria in Supply Appeal No. 37 of 2013-14
whereby the appeal of the petitioner has been dismissed and the
order bearing Memo No. 113 dated 25.2.2014 passed by the
licensing authority-cum-Sub Divisional Officer, Khagaria
whereby the license of the petitioner bearing No. 21M of 2007
was cancelled, has been affirmed.

Facts of the case briefly stated is that a show cause was served on the petitioner on 30.1.2014 charging him on three counts, namely:

- (a) The shop was found closed during the inspection;
- (b) Consumers complained regarding obtaining of extra coupon by the petitioner and;
- (c) Consumers complained for non-supply of wheat for the month of May.

The petitioner responded to the charges vide his reply present at Annexure-3 rebutting the allegations. The licensing authority not being satisfied by the reply filed by the petitioner in response to the allegations which finds mention in the charge memo No. 60 dated 30.1.2014 as well as his reply to the earlier charge Memo No. 56 dated 24.1.2014, has proceeded to order for cancellation of the license of the petitioner vide order bearing Memo No. 113 dated 25.2.2014 present at Annexure-5 and which order has been affirmed when the appeal of the petitioner bearing no. 37 of 2013-14 has been dismissed by the Collector, Khagaria vide order passed on 3.6.2014 present at Annexure-6.

Being aggrieved the petitioner is before this Court. Mr. Prasad, learned counsel appearing on behalf of the petitioner has questioned the orders on the following grounds:

- (a) Although the charge memo relies upon an enquiry conducted by the Block Supply Officer on 30.1.2014 but the copy thereof was never

supplied to the petitioner;

(b) Whereas the allegations present at Item No. 2 and 3 of the charge Memo No. 60 dated 30.1.2014 are general in nature with no specific details, the reply thereto has been rejected by the licensing authority without assigning any reason rather merely by terming as unsatisfactory.

He further submits that all such issues were raised by the petitioner before the appellate authority who has mechanically rejected the appeal, without applying his mind.

With reference to the counter affidavit filed on behalf of the respondents it is stated that the persons whose statement stands recorded at Annexure-C, are not attached to the shop of the petitioner. He thus submits that the order is based on no evidence.

It is further argued by Mr. Prasad that although the charge memo rests on only three charges but the order of cancellation rests on five charges and thus the order of cancellation has been passed beyond the charge memo.

The argument of learned counsel is contested by Mr. Pandey to submit that the order of cancellation has been passed in consideration of reply filed by the petitioner in response to the charge Memo No. 56 dated 24.1.2014 on 30.1.2014 present at Annexure-2 and since the petitioner failed to give a satisfactory response to the charges that the order has been passed. It is

contended by Mr. Pandey that not only the petitioner has been confronting the government officials even his activities in running the fair price shop is engulfed with irregularities. It is thus submitted that the order of cancellation requires no interference.

I have heard learned counsel for the parties and I have perused the materials on record. An order of cancellation is a quasi judicial exercise and has to be done so as to reflect a fair and impartial procedure. Where a person is required to respond to any charge then he has to be supplied with all such materials which are foundation for such charges. What I notice in the present proceedings is that although the charge memo present at Annexure-2 rests on an enquiry report of the Block Supply Officer dated 30.1.2014 which contains the statement of the consumers charging the petitioner with irregularities but neither the copy of such report nor the statement of the consumers have been supplied to the petitioner which categorical statement of the petitioner has not been rebutted. In absence of any specific details as regarding irregularities in distribution of ration or kerosene oil obviously the petitioner could have only responded in a general manner and which he has done vide his reply present at Annexure-3. It is only where the licensing authority would have confronted the petitioner with specific instance that he could have expected the petitioner to respond to the individual charge but which is completely missing



in the present case. The order of cancellation does not discuss any material nor contains any reason to reject the reply of the petitioner. Another illegality which is present in the order of cancellation is that it includes a charge made by one Kamleshwari Prasad even when the charge memo present at Annexure-2 refers to no such charge. Although Mr. Pandey endeavoured to justify the order by submitting that the said charge rests on the statement of said consumer present at Annexure-2 but where the statement of the consumers itself was never provided to the petitioner, he was in no position to respond to the same. This is certainly not a manner in which an order of cancellation or an appeal can be disposed of. In fact the Collector, Khagaria has abdicated his statutory responsibility by rejecting the appeal in a one line order.

Considering the matter in its totality it is indisputable that the entire proceedings suffers from a number of lacunae and which is perpetuated by inclusion of charge no. 5 in the order of cancellation which does not find mention in the charge memo present at Annexure-2. Even the charge of closure of shop on the date of inspection cannot support cancellation in view of the position settled by this Court vide judgment reported in **2012(3) PLJR 583 (Turant Lal Paswan vs. State of Bihar)** holding that a license cannot be cancelled for a single day closure.

For the reasons aforementioned, I am unable to uphold

the impugned order of cancellation as well as its affirmation by the appellate authority and as a consequence the order of cancellation impugned at Annexure-5 dated 25.2.2014 and its affirmation vide order dated 3.6.2014 present at Annexure-6 cannot be upheld and are set aside.

The writ petition is allowed. The license of the petitioner is restored.

(Jyoti Saran, J)

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