

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9308 of 2015

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1. Sakal Deo Ram, aged about 56 years, Son of Late Dahan Ram,
Resident of Village- Regna Panchayat Kurkihar, P.S.- Wazirganj,
District- Gaya.

.... Petitioner/s

Versus

1. The State of Bihar through the Collector, Gaya.
2. The Collector, Gaya.
3. The Sub-Divisional Officer, Sadar, Gaya.
4. The District Supply Officer, Gaya.
5. The District Manager, Bihar Sate Food Corporation, Gaya.
6. The Block Supply Officer, Wazirganj, District- Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Virendra Prasad, Advocate

For the Respondent/s : Md. Raisul Haque, SC-4

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL ORDER

2 09-12-2015

I have heard the learned counsel for the
petitioner and the State.

The petitioner is aggrieved by Annexure 2 dated
05.05.2015 passed by the Sub-Divisional Officer-cum-Licensing
Authority, Sadar, Gaya by which his P.D.S. licence has been
cancelled with immediate effect.

It is contended on behalf of the petitioner that
the order has been passed without granting reasonable opportunity
to the petitioner, thus, the same is bad in law. It is contended that a



show-cause notice appears to have been issued on 22.04.2015, a copy of which has been appended as Annexure-1. However, from back portion of the notice, it appears that the same was served upon the petitioner on 04.05.2015. In show-cause notice, he was granted three days time to reply, however, on the next date itself, i.e. on 05.05.2015, from the date of service of notice upon him, the order impugned has been passed without waiting for filing of a reply to the show-cause notice.

Counter-affidavit has been filed on behalf of respondent nos. 3 and 6, however, learned counsel for the State has not been able to demonstrate from the counter-affidavit that this issue has been addressed. The note regarding service of notice has not been denied specifically by the State.

That apart, from the charges framed, it appears that at the time of enquiry by the Block Supply Officer, some of the villagers belonging to a particular section were speaking in favour of the petitioner whereas those belonging to some other Section were speaking against him and some altercation also took place between them. Therefore, the enquiry could not be completed. However, the charges do not reveal that there was any allegation against the petitioner that the said commotion was created at the instigation of the petitioner. That being so, it does not appear that there was any



valid charge against the petitioner at all flowing from the show-cause notice. The Enquiry Officer, in his letter, has clearly stated that the entire issue appears to be raised for some political motive. In such a situation, the question would be how it can be assumed that the petitioner was not dealing with P.D.S. shop in accordance with the terms of the licence ? How could one reach to such conclusion that petitioner was not properly doing his business? Even the Enquiry Officer has not stated that in his letter which has been brought on record as Annexure-B to the counter-affidavit. However, at the time of hearing, learned counsel for State has raised issue of maintainability also. It is submitted that the petitioner has approached this court without availing the statutory remedy of appeal and, as such, the writ petition would not be maintainable.

In my view, since the order impugned suffers from vital error and appears to have been passed without following the well settled and accepted principle of *audi alteram partem*, no purpose could be served if the case is relegated to the appellate authority as the same would succeed on that ground alone since the petitioner was never granted sufficient time to respond to the show-cause notice. The same having been issued on 22.04.2015 but admittedly having been served on 04.05.2015 and on very next



day, i.e., on 05.05.2015, the order has been passed and as such the petitioner was not able to file reply thereof. That apart, the order impugned suffers from another vital lacunae. In fact, it does not appear that anything was stated by the Enquiry Officer against the petitioner in Annexure B. He has simply stated that the entire issue was politically motivated and, thus, on the aforesaid basis, charges could not have been framed upon the petition for cancellation of licence. It has not been stated by him that the commotion was created during the course of enquiry at the instigation of the petitioner.

Since the show-cause notice clearly show that certain persons were saying that the petitioner was working properly others were saying that he was not working properly. There was altercation between the two groups on such issue. Thus, without ascertaining by making proper enquiry and looking into the records such as stock register and other relevant materials and the stock itself kept in the petitioner's shop, in my view, there was not enough material for the licensing authority to proceed for cancellation.

Aforesaid being the situation, in my considered opinion, the impugned order is not sustainable in law. As a result, the same is quashed and set aside. However, it is made clear that

this order would not come in the way of the respondents if they desire to conclude further enquiry with respect to the working of the petitioner.

(Dr. Ravi Ranjan, J)

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