

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22408 of 2014

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Suresh Paswan. Son of Late Ram Ashish Paswan. Resident of village - Lodipur Lakhraj, Panchayat - Mahindwara, P.S.- Mahnar, District - Vaishali.

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Food & Civil Supply Department, Old Secretariat, Patna.
2. The Secretary, Food & Civil Supply Department, Old Secretariat, Patna.
3. The District Magistrate, Vaishali.
4. The Sub-Divisional Officer, Mahnar, District - Vaishali.
5. The Assistant District Supply Officer, Mahnar, District - Vaishali.
6. The Marketing Officer, Mahnar, District - Vaishali.
7. The Assistant Godown Manager, SFC, Mahnar, District - Vaishali.

.... Respondents

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Appearance :

For the Petitioner : Mr. Ravindra Kumar Singh, Advocate
For the State : Mr. Sanjay Kumar Ojha, AC to GP 18

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 09-12-2015

Heard learned counsel for the petitioner and the State.

Petitioner is aggrieved by Annexure 1 which is an order passed by the S.D.J.M. – cum – licensing authority, Mahnar by which his licence no. 60/2007 granted for running PDS shop has been cancelled with immediate effect.

A point has been raised by the petitioner that the first show cause notice was given to the petitioner directing him to explain the matter within 24 hours otherwise action for cancellation of his licence would be taken.

However, a counter affidavit has been filed stating

that again a show cause notice was issued and, subsequently on 21.10.2014 vide Annexure D in continuation of the earlier again two days time was granted to the petitioner. This time the petitioner had filed his reply within time which has been considered and order has been passed.

However, a short question has been raised on behalf of the petitioner that the show cause notice and the order concerned is based upon the inquiry made by the Assistant District Supply Officer, Mahnar on 30.9.2014. But a copy of the inquiry report was never served upon the petitioner and, that apart, the copy of the alleged complaint made by the concerned beneficiaries were also not been supplied whereas both of them have formed basis for cancellation of licence.

Such allegations having been made in paragraph 1 itself of the writ application, no specific reply has been given in the counter affidavit. Learned counsel for the State points out that paragraph 14 of the counter affidavit serves the purpose. For better appreciation, paragraph 14 of the counter affidavit is reproduced as under :

“ 14. That, the statement made in paragraph 1 and 2 of the writ petition is neither maintainable on the point of law nor on the point of facts. Detail reply has already been given in synopsis of this counter affidavit. Petitioner is not entitled to get the relief as prayed for in the writ petition.”



From perusal of the above it appears that there is no specific reply as to whether copy of the inquiry report was ever given to the petitioner or not. The counter affidavit refers to some synopsis to the counter affidavit for the relevant purpose though no synopsis is available with it. Secondly, copies of the show cause notices have also been appended as Annexures C and D but none of them discloses any enclosure of copy of the inquiry report concerned.

There is another lacunae in the counter affidavit. The report itself says that, on the date of inspection at about 12.45 P.M., petitioner's shop was open whereas in paragraph 7 of the counter affidavit it has been categorically stated that the report says that at the time of inspection the petitioner's shop was closed. Learned counsel for the State does not have any answer to that.

In above view of the matter, in my considered opinion, reasonable opportunity was not given to the petitioner before taking a decision for cancellation of licence. Providing copy of inquiry report and also the copies of the complaint made against the petitioner was essential for filing a proper reply. In its absence, in my view, the impugned order is not sustainable in its present form and the same is accordingly quashed and set aside.

The matter is remitted back to the concerned

licensing authority for taking a fresh decision in accordance with law after granting reasonable opportunity to the petitioner. The decision should be taken within a period of eight weeks from the date of receipt / production of a copy of this order. It is made clear that now the copy of the inquiry report is available on the records of the writ application, therefore, only the copies of the complaints made against the petitioner, if any, are to be supplied and, thereafter, the petitioner should again be given opportunity to file his reply and the final order should be passed considering the grounds raised by the petitioner.

(Dr. Ravi Ranjan, J)

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