

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4152 of 2013

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1. Harilal Paswan S/O Late Mangen Paswan Resident Of Village-
 Rahijagatpur, Tola- Tirashi, P.S.- Bihariganj, District- Madhepura

.... Petitioner/s

Versus

1. The State Of Bihar
 2. The S.D.O., Udakishunganj

.... Respondent/s

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Appearance :

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

For the Respondent/s : Mr. Patanjali Rishi, AC to AAG 10

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**CORAM: HONOURABLE MR. JUSTICE SAMARENDRA
 PRATAP SINGH**
ORAL ORDER

3 07-08-2015 Heard learned counsel for the petitioner and the State.

The petitioner is a holder of PDS license of Laximipur Panchayat. He is aggrieved by order dated 5.10.2012 passed by the S.D.O. Udakishunganj whereby his licence has been cancelled.

The petitioner asserts that he did not receive the show cause notice dated 14.5.2012 reiterated again on 22.8.2012 and as such he could not file his show cause reply.

This Court by order dated 3.4.2013 observed that the respondents shall obtain a certificate from the Postal Department with regard to service or otherwise of the registered post and place the same on record.

The respondents have brought on record the postal receipt as contained in Annexure-A/1, from perusal of which it appears

that notice was sent to the petitioner on 16.5.2012.

Learned counsel for the petitioner submits that the notice has not been sent to the petitioner on his correct address. However, learned State counsel states that it was sent on petitioner's business address.

Learned counsel for the petitioner has brought to my notice, the order dated 6.9.2004 passed by this Court in L.P.A.No.861 of 2004 (Yogendra Prasad v. The State of Bihar & Ors). In the aforesaid case, the matter was decided by the licensing authority without giving opportunity of hearing to the petitioner. This Court observed that as the case was not decided on merit, an opportunity should be given to the appellant to file show cause and the matter be decided on merit.

In my view, the aforesaid order does not lay down a general law that if a dealer does not choose to file show cause, then in every case the matter is to be remitted to the licensing authority for fresh consideration on merit. In case, the show cause could not be served on account of fault of the licensing authority or if for some good reasons, the dealer could not file his cause, then in such cases the matter can be remitted for providing a further opportunity of show cause and for adjudication on merit.

The petitioner's case that he did not receive show cause is difficult to believe in view of postal receipt brought on record by

the respondents. In this view of the matter, this writ application is disposed of with the following directions:

i) The petitioner would file an appeal before the Appellate Authority.

ii) In case the petitioner files an application for condoning the delay in filing the appeal, the learned Appellate Authority would sympathetically condone the delay as the petitioner was pursuing his remedy before this Court.

iii) If the Appellate authority is satisfied that the petitioner did not receive the show cause issued on 14.5.2012 reiterated on 22.8.2012 on his business address or that he was prevented from sufficient reason for filing show cause, he would remit the matter to the S.D.O., Udakishunganj for hearing afresh.

iv) In case, Appellate authority comes to the conclusion that the petitioner in fact received show cause notice, still he did not chose to file reply, he would be giving an opportunity to file a detailed show cause and thereafter would proceed to consider the matter on merit. The Court has not expressed any opinion on the merit of the case.

(Samarendra Pratap Singh, J)

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