

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.703 of 2014

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1. Md. Hasare Alam Son of Md. Khalid Sah Resident of Village-
Balrampur, Police Station- Purushottampur, District- West Champaran

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Food Supplies
and Commerce, Government of Bihar, Patna
2. The Collector, West Champaran, Bettiah
3. The Sub Divisional Officer, Narkatiaganj, District- West Champaran

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shravan Kumar, Sr. Adv.

Mr. Rajiv Nayan Singh, Adv.

For the Respondent/s : Mr. Suresh Kumar, A.C. to G.P.5

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

4 30-06-2015 Heard Mr. Shravan Kumar learned Senior counsel for the
petitioner and Mr. Suresh Kumar, A.C. to G.P.5 for the State.

The petitioner is the son of Late Khalid Sah who was holder
of a licence for running Fair Price Shop under the Public
Distribution System (Control) Order as enforced vide Fair Price
Shop Order 2007 (hereinafter referred to as 'the Control Order')
bearing Licence No.1/1985 (29/2007). On charges of alleged
irregularity that a proceeding was initiated against the father of the
petitioner. A show cause notice was issued, a copy of which is
placed at Annexure-B/3 series on 4.11.2011, charging the father of
the petitioner on four counts namely:

(a) Shop was closed on 26th and 27 October, 2011,

(b) Obtaining coupons for the month of November, 2011 as

well while distributing ration for the month of September and October, 2011,

(c) Irregularities in distribution of ration; and

(b) Unpleasant conduct with the consumers.

Admitted position is that the father of the petitioner did not respond to the show cause which resulted in an order of cancellation passed by the Licensing Authority-cum-Sub Divisional Officer bearing No.317 dated 2.12.2011, a copy of which is placed at Annexure-C/3 to the counter affidavit and Annexure-3 to the writ petition. The father of the petitioner preferred statutory appeal under Clause 15 of 'the Control Order' giving rise to Appeal No. 13 of 2011-12 but during its pendency he deceased and was substituted by the present petitioner under the orders of this Court who has pursued the matter but the appeal was dismissed on 31.10.2013 vide Annexure-11 and hence this writ petition.

Mr. Shravan Kumar learned Senior Counsel for the petitioner has questioned the orders on following grounds which also stands noted in the order passed on 21.4.2015.

(a) The order entirely rests upon the report of the Block Supply Officer dated 28.10.2011 which was never supplied to the father of the petitioner;

(b) Whereas the father of the petitioner gave evidence of his

illness on 26th and 27th of October, 2011 but he was not permitted to adduce evidence in respect of second charge relating to obtaining of coupons for extra months and which finding is based on no evidence;

(c) To the knowledge of the petitioner the show cause notice bearing Memo no.66 dated 4.11.2011 was not against the proposed cancellation;

(d) The order of the cancellation does not discuss the material on which the satisfaction of cancellation has been recorded by the Licensing Officer; and

(e) The appellate order is mechanical.

The matter was last heard on 23.6.2015 when this Court was of the opinion that unless there are materials in possession of the petitioner which would vindicate the stand of the father of the petitioner in denying the charges, a remand of the matter would only be an exercise in futility. It is following the observations of this Court that a supplementary affidavit has been filed today enclosing the statement of such of the consumers whose statement formed the foundation for the cancellation order. Relying upon the supplementary affidavit it is contended by Mr. Shravan Kumar learned Senior counsel that although the respondents have relied upon the statement made by the five consumers which forms enclosure to the report of the Circle Officer-cum-Block Supply



Officer, Narkatiaganj dated 28.10.2011 and which also was the foundation for initiation of the cancellation proceeding but it is these consumers who have denied any such complaint made against the father of the petitioner of irregularity. He thus submits that since admittedly neither the report of the Block Supply Officer nor the statement of the consumers was handed over to the father of the petitioner, it was an ex-parte proceeding and the orders passed thereon would not be sustainable. He further submits that even if the father of the petitioner did not choose to file a show cause but he filed an appeal to contest the issue by denying the charges and thus it was for the respondent to bring on record the material to support the charges which are completely missing in the present case.

The argument of Mr. Kumar has been contested by learned counsel for the State who submits that since there were a number of irregularities against the father of the petitioner, who also did not chose to submit any show cause reply, the present appellant cannot be permitted to pursue the charge.

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

That the present petitioner who happens to be the son of the deceased licence holder has been permitted to pursue the challenge under the orders of this Court passed in C.W.J.C.No.6965 of 2013,



a copy of which is placed at Annexure 10 to the writ petition, it is not for this Court to pre-judge at this stage as to whether the petitioner would be able to vindicate the position of his father. The only issue that requires consideration by this Court is that even if the father of the petitioner did not choose to file show cause, whether there were sufficient materials on record available with the respondents to invite an order of cancellation. That the copy of the report which is the foundation for the proceeding was never supplied to the father of the petitioner is an admitted position. Apart there from, of the four charges leveled against the father of the petitioner vide charge Memo dated 4.11.2011 present at Annexure-B/3 series of the counter affidavit, whereas Charge Nos. 3 and 4 are general in nature with no specific details, in so far as charge No.1 is concerned it has been argued that the father of the petitioner was not well and in so far as the charge regarding obtaining extra coupon leveled against the dealer on the basis of statement made by 5 consumers as is manifest from the report of the Circle Officer present at Annexure-A/3, is concerned, these very consumers have stood up to deny the allegations as is manifest from the affidavit sworn by them, copies of which forms part of supplementary affidavit.

In my opinion, the failure of the respondents to supply the enquiry report containing the statement of the consumers renders



the charge of obtaining extra coupon vague and in view of their affidavit enclosed in the supplementary affidavit, it also becomes doubtful. These are sufficient grounds for the remand of the entire matter before the statutory authority for reconsideration of the matter. Apart therefrom, it is also manifest that the order of cancellation as well as its affirmation by the Collector, West Champaran vide order present at Annexure-3 and 1 respectively entirely rests upon Supreme Court judgment and the report of the Block Development Officer, a copy of which was never supplied to the father of the petitioner.

For the reasons aforementioned, the order dated 7.12.2011 passed by the Licensing Authority-cum-Sub Divisional Officer, Narkatiaganj present at Annexure-3 and its affirmation by the appellate authority vide order passed on 31.10.2013 in C.R.M. Appeal No.13 of 2011-12 present at Annexure-1 cannot be upheld and are set aside and the matter is remanded back to the licensing authority for consideration of the matter afresh and its disposal in accordance with law and after opportunity of hearing to the petitioner.

Since the materials which are the foundation for the proceedings are now available in the counter affidavit, the petitioner cannot make any such complaint and he shall be under a duty to respond to the charges present at Annexure-B/3 in the

backdrop of the report present at Annexure- A/3 to the counter affidavit.

The petitioner shall appear before the Licensing Authority along a copy of this order as well as the show cause reply in response to the charge memo present at Annexure-B/3 and when the Licensing Authority shall proceed to dispose of the matter in the manner stipulated hereinabove.

Despite the order of cancellation being set aside this Court is not persuaded to restore the licence of the deceased licence holder inasmuch as even if the petitioner would succeed in his pursuit he would yet have to approach the licensing authority under Clause 2.5 of 'the Control Order' seeking a transfer of the licence in his name and which would have to be decided on its own merits.

The writ petition is allowed with the directions/observations aforementioned.

(Jyoti Saran, J)

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