

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1122 of 2014

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Ravindra Kumar, son of Late Jagdish Paswan, resident of Village- Mahmadpur,
P.O.- Dhap Chiraiya, P.S.- Sherghati, District- Gaya.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Food and Civil Supply, Bihar, Patna.
2. The District Magistrate, Gaya.
3. The Sub Divisional Officer, Sherghati, District- Gaya.
4. The Block Supply Officer, Sherghati Block, District- Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dharendra Nath Jha
Mr. Md. Javed Jafar Khan

For the Respondent/s : Mr. Rajesh Kumar, A.C to GP-28.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 07-07-2015

Heard the parties.

The petitioner prays for quashing of the order dated 19.5.2011 passed by the Licensing Authority –cum- Sub-Divisional Officer, Sherghati, district- Gaya in Supply Case No.41 of 2011, whereby the licence of the petitioner for operating a fair price shop under the Public Distribution System (Control) Order, 2001 as enforced vide Fair Price Shop Order, 2007 (hereinafter referred to as ‘the Control Order’) bearing Licence No.408 of 2007 has been cancelled. The petitioner also questions the order passed by the Appellate Authority –cum- District Magistrate, Gaya in Supply Appeal No.08 of 2012 whereby the statutory appeal of the petitioner has been dismissed on 1.8.2013.



The facts of the case briefly stated is that a show cause notice was issued to the petitioner vide Memo no.477 dated 5.5.2011. The allegations are based upon an enquiry report submitted by the Executive Magistrate, Sherghati who conducted an inspection in the shop of the petitioner on 5.2.2011. The following allegations were set up against the petitioner:

- (1) The shop was closed;
- (2) The notice board mentioned that the petitioner had gone to deposit the coupons in the Block office but upon verification it was found that he had not gone there;
- (3) The statement of the coupon-holders showed that pay in slip in respect of BPL scheme had not been deposited by the petitioner since long and as a result of which the BPL consumers were deprived of their ration;
- (4) The consumers under the Antyodaya scheme were given ration of 28 Kg or 30 Kg. in place of 35 Kg. and was made to pay Rs.100/-;
- (5) The petitioner was obtaining extra coupons from some of the consumers;
- (6) The petitioner was realizing higher price for supply

of kerosene oil and some of whom were even denied such supply; and

- (7) Though the petitioner was advised to correct the irregularity in the meeting held in this respect but he has not corrected himself.

The show cause notice was replied by the petitioner, a copy of which is placed at Annexure-2 in which he has specifically denied each of the allegations. The Licensing Authority cum- Sub-Divisional Officer, Sherghati vide order bearing Memo no.18 dated 19.5.2011 while rejecting the reply filed by the petitioner, has passed the order of cancellation placed at Annexure-3 and which order has been affirmed by the Appellate Authority - cum- District Magistrate, Gaya who has dismissed the Supply Appeal No.8 of 2012 filed by the petitioner vide order passed on 1.8.2013 impugned at Annexure-5. The petitioner being aggrieved is before this Court.

The counsel for the petitioner has questioned the impugned orders on the following grounds:

- (a) Neither the copy of the enquiry report nor the statement of the aggrieved consumers were ever supplied to the petitioner;
- (b) The allegations are general in nature without giving

any specific details of the consumers who made any such complaint.

- (c) The order of cancellation charges the petitioner of not producing evidence in support of his stand but in absence of any specific instance of default, the petitioner could not have been charged with any such failure;
- (d) The order is based on no evidence.

The arguments advanced by learned counsel for the petitioner has been contested by the counsel for the State who submits that the charges against the petitioner are very serious and the Licensing Authority after examining the show cause reply has found the defence unsustainable and which has led to the impugned orders which suffer from no infirmity.

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

Though the petitioner has been charged on 7 counts but the allegations are sweeping and made in a general manner. The petitioner has been charged with irregular distribution of kerosene oil and grains under the BPL scheme and the Antyodaya scheme etc. Though the charge memo refers to the statement of the coupon-holders and the consumers but the names are missing. To support



the charge memo and fill up the lacuna, the counter affidavit has enclosed the statement of three persons taken on a plain sheet which nowhere discusses the circumstances in which it was recorded and whether it was during the course of enquiry or was a part of complaint, nothing is reflected therein. The document also shows that although the consumers have put their signatures but the statement has been recorded by some other person.

Be that as it may the statement is on a plain sheet and does not anywhere indicate its source or the circumstance under which the same was recorded and thus is not worthy to be acted upon. Further I have already observed, even if the charges against the petitioner appear rather serious but unless he is confronted with specific instance of irregularity along with the names of the consumers who have made such complaint along with the specific details as to the date and month in which such irregularity has taken place, the petitioner certainly cannot respond to a general accusation. A general accusation can only be replied in a general way and the petitioner has completed such formality.

In the circumstances discussed it is manifest that the order of cancellation of licence of the petitioner is based on no evidence. The petitioner has neither been confronted with specific instance of irregularity nor he has been confronted with the

statement of individual consumers charging him with any such irregularity. In the circumstances discussed the reply of the petitioner certainly could not have been rejected on the anvil of not being satisfactory.

For the reasons discussed hereinabove, the order of cancellation of licence passed by the Licensing Authority –cum- Sub-Divisional Officer, Sherghati bearing Memo No.18 dated 19.5.2011 impugned at Annexure-3 as well as the appellate order passed in Appeal No.8 of 2012 by the District Magistrate, Gaya impugned at Annexure-5 cannot be upheld and are accordingly set aside. The licence of the petitioner stands restored.

This writ petition is allowed.

This order would, however, not preclude the Licensing Authority to proceed afresh in the matter but only after removing the lacuna in the proceeding and after supplying the materials on which the Licensing Authority intends to rely upon for supporting the charges.

(Jyoti Saran, J)

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