

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.206 of 2015

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1. Dilip Paswan Son of Shyam Lal Paswan Resident of Village - Manpur
P.S - Fatehpur District - Gaya.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner, Magadh Range, Gaya.
3. The District Magistrate cum Collector Gaya
4. The Sub Divisional Officer, Sub-Divisional -Sadar, District - Gaya.
5. The Block Supply Officer Block - Fatehpur, District - Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sushmita Mishra, Adv.

For the Respondent/s : Mr. R.K. Singh, GP-2

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

4 02-04-2015 Heard Ms. Sushmita Mishra, learned counsel for the
petitioner and Mr. Kamlesh Kishore, A.C. to G.P.2 for the State.

The petitioner is aggrieved by the order dated 08.01.2008 passed by the Licensing Authority-Sub Divisional Officer, Sadar, Gaya whereby the licence of the petitioner bearing No. 01 of 1990 has been cancelled. The order passed by the Licensing Authority stands affirmed vide order dated 5.3.2013 passed by the appellate authority i.e. District Magistrate in P.D.S. Appeal No. 11 of 2011-12 which was dismissed and even the revision preferred by the petitioner was dismissed for non prosecution on 16.10.2014. Copy of the orders passed by the Licensing Authority, the appellate authority and the revisional authority are placed at Annexures-3, 2

and 1 respectively.

Ms. Sushmita Mishra, learned counsel appearing on behalf of the petitioner submits that the petitioner has been subject to continuous harassment at the hands of the statutory authorities in as much as initially a show cause notice was issued by the Sub Divisional Officer on 21.6.2007 in the light of an inspection conducted by the Block Development Officer on 17.6.2007 charging him with irregularities in distribution of kerosene oil and of improper conduct towards the consumers and which was responded by the petitioner on 27.6.2007 refuting the allegations. The copies of the notice and reply are placed at Annexures- 4 and 5 to the writ petition.

It is contended that without disposing the earlier proceeding another show cause was issued suo motu by the Block Development Officer on 27.11.2007 again charging the petitioner with improper distribution vide notice placed at Annexure-6 and which was responded to by the petitioner vide reply placed at Annexure-10 clarifying the position. She submits that not being satisfied a third show cause was issued by the Sub Divisional Officer, Sadar, Gaya on 29.11.2007 in the light of an inspection carried out by the Block Development Officer, Fatehpur on 27.11.2007 and when the petitioner was charged with short supply

of wheat and rice under the Antyodaya Scheme to the consumers as well as of short supply of kerosene.

Learned counsel submits that the petitioner filed a detailed reply to the show cause on 13.12.2002 refuting all charges. She submits that not being satisfied the Sub Divisional Officer vide impugned order passed on 8.1.2008 cancelled the licence of the petitioner relying upon the enquiry report submitted by the Block Supply Officer and the statement of the consumers which form part of the report. She submits that although the entire records were placed before the statutory authority to demonstrate that there were no irregularities on the part of the petitioner in distribution of the food grains and although most the consumers had stated in her favour but it is only on account of the report of the Block Supply Officer and the statements of the consumers forming part of the report that the licence of the petitioner was cancelled and has been mechanically affirmed by the superior authorities. Learned counsel submits that although neither the enquiry report nor the statement of the consumers placed at Annexure-C, was ever supplied to the petitioner but even the statement of the consumers reflects that whereas 10 persons have stated in favour of the petitioner and has absolved him from all the allegations on the other hand the statement of the complainants

suffers from gross infirmities and are unreliable. She submits that some of these complainants have also sworn affidavit that their statement was not recorded in their presence, thus creating doubt as to the veracity of the report.

The arguments of learned counsel has been contested by learned counsel of the State who has relied upon the statement made in the counter affidavit as well as the opinion of the statutory authorities reflected in the orders impugned in the writ petition. However, even while submitting as such learned counsel fairly admits with reference to the statement made in paragraph 5 of the counter affidavit that the enquiry report of the Block Development Officer was never supplied to the petitioner nor he was confronted with the statements.

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

The petitioner is a licensee since 1990 and there is nothing on record to show that he was subjected to any proceeding. The trouble for him has started in the year 2007. Three rounds of proceedings have been initiated against the petitioner within a span of one year. While the first and second round did not result in any adverse order, it is the third round show cause issued on 29.11.2007 which has resulted in the cancellation. Although the



Licensing Authority while passing the cancellation order refers to the first show cause dated 21.6.2007 but it is not understood why the proceedings initiated vide show cause dated 21.6.2007 was not taken to its logical conclusion rather was substituted by a second show cause issued on 29.11.2007 which nowhere refers to the earlier show cause. This single aspect of the matter is enough to render the impugned order bad in law for once a show cause was issued by the Sub Divisional Officer on 29.11.2007 which does not refer to any of the allegations forming the earlier show cause, he had no jurisdiction to look into the allegations made in the earlier show cause dated 21.6.2007 which would be deemed to have reached its conclusion by submission of reply by the petitioner on 27.6.2007. The Block Supply Officer appears to be quite adventurous in the present matter in as much as even though he has no jurisdiction to issue show cause yet on 27.11.2007 he has issued a show cause notice to the petitioner charging him with allegations not being satisfied by the outcome of the earlier round of proceedings initiated vide show cause notice dated 21.6.2007 on his earlier inspection dated 17.6.2007. It is apparent that the Block Supply Officer was chasing the appellant for no justifiable reason.

It is a matter of record that the petitioner has responded to



the earlier show cause(s) and which were not pursued rather the matter was closed because no order was passed. The third round show cause issued on 29.11.2007 though refers to an enquiry made by the Block Supply Officer on 24.11.2007 but the same was never supplied to the petitioner nor the petitioner was confronted with the alleged complaints forming part of the report. In fact a perusal of the statements accompanying the report shows that whereas 10 consumers have stated in favour of the petitioner, on the other hand out of the 8 complainants, whereas the right thumb impression of Mina Devi and Dedi Sao has not been identified by anybody, the statements of Krishna Prasad and Satyendra Kumar has been endorsed by their respective fathers. Meaning thereby 4 of the 8 complainants are a suspect. This by itself creates a serious doubt as to the veracity of the report which forms the basis of the impugned order of cancellation.

Considering the matter in totality it is apparent that when the Licensing Authority and the Block Supply Officer did not succeed in pinning the petitioner in the first round then within six months the present proceeding was initiated without disposing the earlier proceeding. That the present proceeding is motivated, is apparent from the fact that although the show cause notice dated 22.11.2007 nowhere makes reference to the earlier show cause

notice dated 21.6.2007 but the Licensing Authority has passed a composite order of cancellation upholding the allegation set out in the notice dated 29.11.2007 as well as the earlier notice dated 21.6.2007. Thus apart from the fact that the very foundation of the proceeding was a suspect, even the culmination is infracted by procedural infirmities of serious nature.

For the reasons discussed above, the orders impugned are held unsustainable and are accordingly set aside.

The writ petition is allowed and the licence of the petitioner stands restored.

(Jyoti Saran, J)

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