

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.253 of 2014

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Raghuvir Prasad, son of Late Munna Sao, Public Distribution System Dealer at Mohalla- Mullick Sarai, Ward No.2, NAC, Islampur, P.S. Islampur, Block- Islampur, District – Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar through Department of Food, Supply and Consumer Protection.
2. The Principal Secretary Department of Food, Supply and Consumer Protection.
3. The Collector, Biharsharif, Nalanda.
4. The Sub-Divisional Officer, Hilsa, Biharsharif, Nalanda.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anand Kumar Ojha

For the Respondent/s : Mr. Dev Kumar Pandey, AC to GP-6

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 11-03-2015

Heard Mr. Anand Kumar Ojha, learned counsel appearing on behalf of the petitioner and Mr. Dev Kumar Pandey, learned Assisting Counsel to Government Pleader No.6 for the State.

The petitioner, a licensee under the Public Distribution System (Control) Order, 2001 enforced vide Bihar Fair Price Shop Order, 2007 (hereinafter referred to as 'the Control Order'), is aggrieved by the order dated 9.11.2011 passed by the Sub-Divisional Officer- cum- Licensing Authority under 'the Control Order' whereby the licence of the petitioner bearing No.01 of 2007 for running a shop under the public distribution system stands cancelled and which order stands affirmed by the appellate authority i.e. the Collector, Nalanda when the statutory appeal preferred by the

petitioner bearing Supply Appeal No.01 of 2012 was dismissed on 6.8.2013. Copies of the orders impugned in this writ petition are placed at Annexures 3 and 4 respectively to the writ petition.

The facts of the case briefly stated is that following an enquiry conducted by the District Level Committee on 30.9.2011 that the petitioner was served with a show cause notice bearing Memo no.1074 dated 27.10.2011 setting out seven charges, constituting irregularities under the order and requiring a response from the petitioner, a copy of which is placed at Annexure-1. According to the petitioner, he filed his response on 8.11.2011 vide Annexure-2 but such position is disputed by the respondents and the Sub-Divisional Officer vide his order impugned dated 9.11.2011 placed at Annexure-3 in absence of any contest by the petitioner cancelled the licence on the alleged irregularities. The appeal of the petitioner was also dismissed and hence this writ petition

Whereas it is the contention of Mr. Ojha that the materials relied upon by the respondents for cancellation of licence were never supplied to the petitioner nor his show cause has been dealt with either by the Licensing Authority or the appellate authority but his arguments have been contested by Mr. Pandey, learned counsel appearing on behalf of the State that in the records there is no show cause filed by the petitioner and it was for the



petitioner to prove the same. According to Mr. Pandey since the allegations went un-rebutted hence it would be deemed to have been accepted and the matters of trade and commerce are not akin to service law where service of an enquiry report is a mandatory requirement. It is the contention of learned counsel for the State that since the petitioner has admitted to the irregularities regarding maintenance of the notice board as well as maintenance of stocks in the house other than the sale premises hence these admissions are sufficient for cancellation of his licence. It is submitted that it was for the petitioner to prove before the Licensing Authority as well as the appellate authority regarding issuance of cash-memos as well as his grievance relating to distribution of lesser amount of kerosene oil which he has failed to do so and hence the order impugned requires no interference. He further submits that since the enquiry report was never demanded by the petitioner hence he cannot take up this plea before this Court.

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

The filing of the show cause reply by the petitioner is a disputed issue of fact and although the copy of the reply placed at Annexure-2 demonstrates its receipt by some authority on 8.11.2011 but this fact is being contested by the counsel for the respondents.



Nonetheless it is a matter of record that 7 allegations were set out against the petitioner based upon an enquiry conducted by the District Level Committee on 30.9.2011. It is also a matter of record that this enquiry report was never supplied to the petitioner. Thus even if the respondents contest the filing of the show cause but the stand taken by the petitioner before the appellate authority was in tune with the show cause and he has denied each of the allegations except regarding maintenance of stocks within his premises. There is nothing on record to show that there was any mishandling of the food-grains by the petitioner and that it has been distributed in illegal manner. In my opinion, irregularities in maintenance of notice board or maintenance of the stocks within the premises of the petitioner are too trivial and cannot form a basis for cancellation of licence. No doubt there were other serious charges against the petitioner regarding non-issuance of cash-memo to the consumers, distribution of lesser amount of kerosene oil and non-distribution of food-grains but surprisingly even while making such allegations, the names of such consumers who are dissatisfied by such action of the petitioner are conspicuously missing. The allegations are sweeping in nature without reference to any specific consumer. The stand of the petitioner in denying such charges as found in the show cause as well as before the appellate authority was never contested by the

respondents by leading any evidence in support thereof.

In my opinion the non-supply of the enquiry report conducted by the District Level Committee which is the foundation for issuance of show cause notice placed at Annexure-1 as well as non-supply of names of such of the consumers who had complained against the petitioner as regarding the irregularities in distribution of the food-grains or the kerosene oil has prejudiced the petitioner to file his purposeful reply and in absence thereof, the order impugned in my opinion, are based on no materials.

Though it was strenuously argued by Mr. Pandey that in absence of any response by the petitioner the allegations would be deemed to have been admitted but in my opinion even if the show cause reply was missing, the orders passed by the statutory authorities having civil consequences and resulting in cancellation should reflect application of mind. Unfortunately it is grossly missing inasmuch as neither the order of the Licensing Authority nor the order of the appellate authority deal with the materials which formed the basis to drive home the charges. The orders impugned are indefensible and cannot be upheld.

In result, the writ petition is allowed and the order passed by the Licensing Authority as contained in Annexure-3 along with the order of the appellate authority placed at Annexure-4 are set

aside. The licence of the petitioner stands restored.

This order would, however, not preclude the respondents to proceed in the matter in accordance with law bearing in mind the observations made hereinabove.

(Jyoti Saran, J)

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