

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19592 of 2014

=====

Vijay Kumar, Son of late Budhdev Singh @ Budhu Singh, Resident of Village -
Rehua, Police Station - Neemchak Bathani, District - Gaya.

.... Petitioner

Versus

1. The State of Bihar through the Commissioner cum Secretary, Department of Food and Civil Supplies, Govt. of Bihar, Patna.
2. The Collector, Gaya.
3. The Sub-Divisional Officer, Neemchak Bathani Office, (Khijarsarai) District - Gaya.
4. The Circle Officer cum Block Supply Officer, Neemchak Bathani, District - Gaya.

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Milind Kumar Mishra, Advocate

For the Respondent/s : Mr. Kumar Alok, SC-7

Mr. Neeraj Kumar, SC to SC-7

=====

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 24-11-2016

Heard parties.

The petitioner seeks quashing of Annexure-6, which is an order dated 10.12.2013, by which his P.D.S. Licence No.01/2008 has been cancelled as well as Annexure-7, which is an order dated 5.08.2014 passed in Supply Appeal Case No.06/2014 by the Collector-cum-District Magistrate, Gaya, by which the appeal filed by the petitioner against the said order was also dismissed.

It is noticed in the order that the Block Supply Officer-cum-Circle Officer, Neemchak, Bathani has submitted a report dated 5.12.2013 indicating certain irregularities committed by the licensee,



i.e., the writ petitioner with an allegation that he has black-marketed food grains. Thereafter, a direction was given for lodging the FIR which was eventually lodged under Section 409 of the Indian Penal Code and Section 7 of Essential Commodities Act. Subsequently, the petitioner was given a show cause notice but the licensing authority has come to the conclusion that the report of the Block Supply Officer-cum-Circle Officer appears to be correct and, thus, he has taken a decision to cancel the licence of the petitioner.

Learned counsel for the petitioner raises two questions. First is that from perusal of the order, it appears that the same is based upon the report of enquiry of Block Supply Officer-cum-Circle Officer dated 5.12.2013 but a copy of such report was never supplied to the petitioner. Therefore, the petitioner was unable to file a proper reply to the allegations made in the show cause notice. The second issue, which has been raised by the petitioner, is that though the licensing authority has noticed the reply filed by the petitioner to the show cause notice but it has not recorded any finding as to why the grounds raised by him were not found tenable.

Counter affidavit has been filed on behalf of respondent nos.3 and 4 taking a clear stand in paragraph 10 that the petitioner was well aware of all the facts of the inspection report as the copy of the said report was supplied to the petitioner along with show cause



notice on the next day after inspection.

However, the show cause notice, which has been appended as Annexure-2 by the petitioner, does not indicate any enclosure thereto so that a prudent person can come to the conclusion that such report must have been appended with the show cause notice.

In the above facts and circumstances, this Court vide its order dated 17.11.2016 directed the Sub-Divisional Officer, Neemchak, Bathani to appear in person along with the entire original records of the case concerned to show that a copy of the show cause notice was served upon the petitioner along with enquiry report.

In pursuance of the aforesaid order, the Sub-Divisional Officer is present in person and the records have been produced. However, learned counsel as well as the Sub-Divisional Officer both have miserably failed to indicate from the records that there is any evidence that a copy of the enquiry report was supplied to the petitioner either along with show cause notice or even thereafter but prior to taking a final decision. What is being said is that the Circle Officer was directed to supply the same upon the petitioner.

In my view, such sort of statements and submissions can be noted only to be rejected in absence of any iota of evidence indicating towards that. Thus, it has to be understood that a copy of



the enquiry report was never supplied to the petitioner. Similarly, the order impugned, though has noticed that the reply was filed by the petitioner but it has not recorded any finding as to why the grounds raised by him were not found tenable.

By now, it is well settled that as per the Clause 7(ii) of the Public Distribution System (Control) Order, 2001 reasonable and adequate opportunity has to be given to the licensee before cancellation of the licence. It has been held in several decisions that if the inquiry report or complaint made by the beneficiaries forms a ground for issuance of show cause notice and also for cancellation of licence then copy of the same must be supplied before taking a final decision so that effective reply could be filed by the licensee otherwise it has to be held that adequate opportunity was never given to the licensee.

In my considered view, the impugned orders suffer from aforesaid fatal lacuna and, accordingly, the same cannot be allowed to be sustained.

As a result, this writ application succeeds. The impugned orders as contained in Annexure 6 and 7 are quashed and set aside.

However, the matter is remitted back to the Licensing Authority for taking a fresh decision in accordance with law. Before coming to a final conclusion, copies of the inquiry report and the



complaints made by the beneficiaries, if any, against the petitioner should be supplied to the petitioner and a fresh opportunity should be given to him for filing effective reply to the show cause notice. Thereafter, the decision should be taken by the Licensing Authority on its own merit and in accordance with law after considering the grounds raised by the petitioner in his reply and that should be speaking one.

It is expected that the entire exercise would be completed within a period of three months from the date of receipt/production of a copy of this order.

The personal appearance of Sub-Divisional Officer, Neemchak, Bathani, Gaya is dispensed with.

(Dr. Ravi Ranjan, J)

V.K. Pandey/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	10.01.2017
Transmission Date	N.A.

