

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8096 of 2015

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Nawal Kishore Rai son of Late Subhash Rai resident of Village- Barua, P.S.-
Purpri, District Sitamarhi.

.... Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Food and Supply , Govt. of Bihar,
3. The Collector , District- Sitamarhi.
4. The Sub Divisional Officer , Pupri, District- Sitamarhi.
5. Block Development Officer, Pupri, District- Sitamarhi.

.... Respondents

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Appearance :

For the Petitioner : M/s Banwari Sharma, Md. Kamran and
S.N. Sharma, Advocates

For the State : Mr. KUNDAN BAHADUR SINGH, SC22

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 12-07-2016

Heard the parties.

Through this writ application, the petitioner seeks quashing of the order dated 04.05.2012 passed by the Sub Divisional Officer-cum-Licensing Authority, Sitamarhi, contained in Annexure 2, by which his licence no. 13/95 granting for running PDS shop has been cancelled as well as the appellate order dated 12.01.2015 passed by the Collector, Sitamarhi in Supply Appeal No.04/2013 contained in Annexure 6 by which the appeal filed by the petitioner has been dismissed.

It is urged on behalf of the petitioner that the order impugned passed by the licensing authority(Annexure 2) suffers



from diverse lacuna. For example, the order is based on the report of the inquiry conducted by the Block Supply Officer on 01.03.2012, however, a copy of the same was never served upon the petitioner so that a proper reply could have been furnished by him. It is next contended that, in the show-cause notice, even the letter number or the date of inquiry has not been disclosed. Apart from this, the inquiry report does not stand enclosed to the show-cause notice, a copy of which has been annexed as Annexure 1. It is also submitted that the impugned orders are non-speaking and are arbitrary being in violation of the Principles of Natural Justice inasmuch as even the reply to the show-cause notice which was submitted by the petitioner has not been considered in its proper perspective as no reason has been recorded as to why the grounds raised by the petitioner were not found tenable. As such, that would be not only in violation of the Principles of Natural Justice but also in violation of mandatory provisions contained in Clause 7(ii) of the Control Order which mandates that before taking a decision on cancellation of licence reasonable opportunity should be given to the licensee to make out his case.

Though a copy of the writ petition was served upon the State on 12.05.2015 itself, learned counsel for the State submits that he has not been able to receive any instruction till date. He seeks

adjournment for filing a counter affidavit.

However, in view of the fact that there is no indication at all in the impugned order passed by the licensing authority as to why the grounds raised by the petitioner in his reply to the show-cause notice were not found tenable or were not acceptable as only one sentence has been devoted that the grounds raised by him are not satisfactory which itself would render the order to be in violation of the Principles of Natural Justice and also the mandatory provision contained in Clause 7(ii) of the Control Order and the writ petition would succeed on the aforesaid sole issue itself, no useful purpose would be served by granting further time to the State for filing counter affidavit.

By now it is well settled that granting reasonable opportunity does not only mean that show-cause notice would be served on the licensee but it would mandatorily mean that if a reply to the show-cause notice is filed then such reply has to be considered and some reason must be assigned by the licensing authority disclosing as to why the grounds raised by the petitioner were not found tenable. Thus, in my considered opinion, the order impugned cannot be sustained in law.

Accordingly, the impugned orders contained in Annexure 2 and 6 are quashed and set aside and the matter is remitted back to the

licensing authority for taking a fresh decision on its own merit and in accordance with law. However, and before doing that, the authority concerned would be required to first serve a copy of the inquiry report and grant further opportunity to the petitioner for filing reply to the show-cause notice and, after consideration thereof, a final order would be required to be passed.

It is expected that the entire exercise would be completed within a period of three months from the date of filing of the reply to the show-cause notice by the petitioner.

(Dr. Ravi Ranjan, J)

SC/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09-08-2016
Transmission Date	NA