

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.21483 of 2013

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Raghunandan Poddar, son of Late Ramji Poddar, resident of village- Jafarpur, Tole-Samaila, under Panchayat-Verna, PS- Kusheshwar Asthan, Dist- Darbhanga.

.... Petitioner

Versus

1. The State of Bihar through its Principal Secretary, Food, Supply and Commerce Department, Govt. of Bihar, Patna
2. The District Magistrate, Darbhanga
3. The Sub-Divisional officer, Biraul, Darbhanga
4. The District Supply Officer, Darbhanga
5. The Block Supply Officer, Kusheshwar Asthan, Darbhanga
6. Bihar State Food and Civil Supply Company Limited through its Managing Director.

.... Respondents

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Appearance :

For the Petitioner	:	Mr. N.K. Agarwal, Sr. Advocate
	:	Mr. Kumar Malendu, Advocate
For the State	:	Mrs. Binita Singh, G.P. 31
	:	Mr. Mukund Mohan Jha, Advocate
For FCI	:	Mr. Shailendra Kr. Singh, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 19-04-2016

Heard parties.

Petitioner seeks quashing of the orders dated 28.04.2011 passed by the Sub-Divisional officer-cum-Licensing Authority, Biraul, Darbhanga as contained in Annexure 4 as well as the appellate order dated 06.09.2013 passed by the Collector-cum-District Magistrate, Darbhanga in P.D.S. case no. 36/11, an appeal filed by the petitioner against the aforesaid order of the licensing authority.



A ground has been raised by the petitioner that the impugned order was based upon an enquiry conducted by the District Supply Officer, Darbhanga on 11.03.2011, a report of which was submitted on 14.04.2011 and two show cause notices were issued upon the petitioner but without appending a copy of the enquiry report. Thus, it is contended that the order had been passed in gross violation of Principles of Natural Justice as a proper reply could not have been given by the petitioner without perusal of the enquiry report. On such issue having been raised by the petitioner, the State counsel was confronted with the question as to whether enquiry report was served upon the petitioner or not ? On 29.03.2016 original records were called for. Original records are available today, however, a second supplementary affidavit has also been filed admitting the fact that copy of the enquiry report was never served upon the petitioner but it is contended that it would not prejudice the petitioner as only statement of villagers have been recorded therein and as such, that would not be a fatal lacunae which would render the impugned order non-sustainable in the eye of law inasmuch as the findings of the enquiry report was indicated in the show cause.

The aforesaid issue is no longer *res integra* as this Court and several other coordinate Benches of this Court have held in clear terms that non supply of enquiry report along with show cause



notice would be in violation of not only the Principles of Natural Justice but also of the provisions contained under Clause 7(ii) of the Public Distribution System (Control) Order, 2007 which mandates in clear terms that before taking a decision for cancellation of licence, reasonable opportunity should be granted to the petitioner to defend his case. This Court, in a decision rendered in *Baban Ojha v. The State of Bihar through Commissioner, Patna Division, Patna (Bihar) & ors.* 2013(2) PLJR 637, has held that unless a copy of the enquiry report is served upon the licensee which has formed basis not only of issuance of a show cause notice but also passing of the final order, it cannot be held that reasonable or adequate opportunity was given to the petitioner for defending his case in as much as it would remain known to him as to on what materials such finding has been recorded by the enquiry officer. Not only that, if there are written allegations made against the petitioner by the beneficiaries then the copies of those complaints should also be provided to the petitioner.

A reference in this regard is made to the decision of this Court in *Brahmadeo Rai v. State of Bihar*, 2013 (2) PLJR 706. In the present case, admittedly, the copies of the enquiry report and the complaints of the beneficiaries were never served upon the petitioner and as such, this writ application has to succeed on this ground alone.

Accordingly, the impugned orders are quashed and set aside. The enquiry report and the copies of the complaints have been given to the petitioner along with supplementary counter affidavits. The petitioner would now be required to appear with his reply before the licensing authority along with a copy of this order. Thereafter the licensing authority would be required to consider the case afresh and also consider the grounds raised by the petitioner in his reply and pass an order in accordance with law. It is expected that the whole exercise would be completed within a period of two months from the date of filing of such reply by the petitioner along with a copy of this order.

(Dr. Ravi Ranjan, J.)

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