

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13954 of 2015

Sanjeev Kumar Singh, Son of Sri Ramashish Singh Resident of Village and Post - Gehuni (Muzahidpur), P.S. - Bhagwanpur, District - Begusarai.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection Department, Old Secretariat, Patna.
2. The District Magistrate, Begusarai, District - Begusarai.
3. The Sub-Divisional Officer, Teghra, District - Begusarai.

.... Respondents

Appearance :

For the Petitioner : Mr. Rajeev Kumar Labh, Advocate

For the State : Mr. Suman Kumar Jha, A.C. to A.A.G.5

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 23-02-2016

Heard the parties.

Petitioner seeks quashing of Annexure 1 dated 08.07.2015 which is an order passed by the Sub-Divisional Officer, Teghra by which his PDS licence no.01/08 granted for running PDS shop has been cancelled.

Two grounds have been raised by learned counsel for the petitioner at the time of hearing. First is that the enquiry report which forms the basis of issuance of show cause notice as well as passing of the order of cancellation was never served upon the petitioner, therefore, it cannot be assumed that he was given reasonable opportunity to defend his case. Secondly, it is

submitted that even reply to the show cause notice filed by the petitioner in the absence of the aforesaid, also does not appear to have been considered by the Licensing Authority.

Vide order dated 12.01.2016 this Court has directed the State authority to file counter affidavit stating as to whether a copy of the enquiry report was served upon the petitioner or not before passing of the impugned order.

From paragraph no.15 of the counter affidavit, it appears that copy of the enquiry report was never served upon the petitioner though it has been submitted that details have been provided in the show cause notice.

This issue is no longer *res integra* as has already been held on several occasions by this Court that for filing reply to the show cause notice the materials which have formed the basis of issuance of show cause notice, be it an enquiry report or the complaints made by the beneficiaries, should be supplied to the concerned licensee so that he could file proper and effective reply. Unless that is done, it cannot be held that adequate and reasonable opportunity was granted to the licensee in terms of Clause 7(ii) of the Public Distribution System (Control) Order, 2001 for setting out his case which is mandatory. That apart, even the reply given by the petitioner

does not appear to have been considered at all by the Licensing Authority as only one sentence has been devoted that the reply is not satisfactory. That itself would not be satisfactory as it is well settled that if the reply is filed by a licensee then there must be some consideration as to why the grounds raised therein are not found tenable by the authority concerned.

Accordingly, this writ petition succeeds on both the grounds. The order impugned is quashed and set aside. However, the matter is remitted back to the Sub-Divisional Officer, Teghra for issuing a fresh show cause notice to the petitioner along with a copy of the enquiry report and copies of the complaints of the beneficiaries, if any, and thereafter grant adequate opportunity to file the reply. After filing of a reply, necessary order should be passed by it which should be reasoned and speaking one after consideration of the grounds raised by the petitioner in his reply.

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

This is made clear that this order would not mean that there would be automatic resumption of supplies to the petitioner as the same would depend upon the final order which

would be passed by the authority concerned.

It is further made clear that even after granting adequate opportunity, if the petitioner fails to file reply to the show cause notice then the Licensing Authority would be at liberty to proceed even in his absence and pass a reasoned order on the concerned issue.

(Dr. Ravi Ranjan, J)

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