

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3554 of 2015

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Shravan Kumar Paswan, Son of late Miso Paswan, Resident of Village- Bela, Post-Geeta Deodha, P.S. - Hasanpur, District- Samastipur.

.... Petitioner

Versus

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

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Rajeev Kumar Labh, Advocate

For the Respondent/s : Mr. Manoj Kumar Sinha, AC to GA-9

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 21-12-2016

Heard parties.

The petitioner seeks quashing of Annexure-1 which is an order dated 4.09.2012 passed by the Sub-Divisional Officer-cum-Licensing Authority, Rosera by which his PDS Licence No.08/2007 has been cancelled. He also assails Annexure-7 which is an order dated 22.11.2014 passed by the Collector, Samastipur in P.D.S. Licence Cancellation Appeal Case No.08/2014 by which the aforesaid appeal has been dismissed and the order passed by the licensing authority has been upheld.

The petitioner challenges the impugned orders on diverse grounds. One of such grounds is that the enquiry has admittedly been made by the Panchayat Secretary of the concerned Panchayat, who is



not a competent authority to do so. Second ground taken by the petitioner is that on appreciation of the enquiry report, the Block Supply Officer issued a show cause notice but he was also not competent to do so as the jurisdiction necessarily lies there with the licensing authority. Though the licensing authority also issued a fresh show cause notice to which the petitioner has replied but there is completely non-application of mind by him as he has simply said that the petitioner could not prove that the charges are not correct, therefore, the same stands proved whereas charges should have been proved on the materials on record but reverse has been done in the matter.

Counter affidavit has been filed on behalf of the State. Learned counsel has vehemently argued to impress upon this Court that the charges has been proved against the petitioner but he is not in a position to say as to how the Panchayat Secretary was competent to hold such enquiry.

On appreciation of the rival contention, this Court finds force in the submission made on behalf of the petitioner. Annexure-8, which is a Gazette Notification dated 25.05.2007, discloses who are the competent authorities to enter into the premises, make an enquiry or inspect, search and seizure with respect to PDS shop within their territorial jurisdiction. Admittedly, the Panchayat Secretary does not



find place therein. The counter affidavit has not stated as to how the Panchayat Secretary could have made such enquiry and how that could have been relied upon by the licensing authority for taking the stringent action of cancellation of licence. That apart, further error which has been committed by the licensing authority is that he has not dealt with the materials to prove the charges. He has merely stated that what are the lacuna in the petitioner's reply to the show cause notice as if the allegations made and the charges levelled in the show cause notice is itself a conclusive proof. In my considered view, the charges based on an enquiry report are only allegations which are required to be proved, therefore, such order cannot be sustained in the eye of law.

The appellate authority has also not considered the aforesaid aspect of the matter.

As a result, this writ application succeeds. The impugned orders as contained in Annexure-1 and 7 are quashed and set aside. The licence of the petitioner stands restored.

(Dr. Ravi Ranjan, J)

V.K. Pandey/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	27.02.2017
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