

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.669 of 2016

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Rajendra Prasad, S/o Late Chakauri Mahto, Resident of Village- Laund, Prakhand-Sirdalla, P.S.- Sirdalla, District- Nawada.

.... Petitioner

Versus

1. The State of Bihar through Secretary, Food & Civil Supply, Government of Bihar, Patna.
2. The District Magistrate, Nawada.
3. The Sub- Divisional Officer, Rajauli.

.... Respondents

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Appearance :

For the Petitioner	:	Mr. N.K. Agarwal, Sr. Advocate
	:	Mr. Ravi Bhushan Prasad-I, Advocate
	:	Mr. Vijay Prakash Bhargava, Advocate
For the State	:	Mr. Ashok Kumar SC11
	:	Mr. Amresh, AC to SC 11

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 11-05-2016

Heard parties.

The Sub Divisional Officer is present in person and files counter affidavit.

Through this writ application, the petitioner seeks quashing of Annexure 3 dated 27.12.2011 passed by the Sub Divisional Officer-cum-Licensing Authority, Rajauli by which his licence granted for running PDS shop has been cancelled. He further seeks quashing of the order dated 14.02.2012/16.02.2012 passed by the District Magistrate-cum-appellate authority, Nawada by which the appellate authority has upheld the order passed by the licensing authority and dismissed the appeal.

The petitioner has raised an issue that he was granted

three days time to respond to show cause as contained in Annexure-1 which is based upon an enquiry done by the Block supply Officer but the copy of the same was never served upon him. Thus, it is contended that the entire action stands vitiated.

I find force in the aforesaid submissions raised on behalf of the petitioner. By now, it is well settled that if the show cause notice or the order impugned passed by the licensing authority is based upon any enquiry then copy of the enquiry report must be served upon the petitioner and in case there are complaints against the petitioner made by the beneficiaries then copies of such complaints should also be supplied to the petitioner so that a proper reply could be filed by him defending his case otherwise it has to be held that a reasonable and adequate opportunity was never give to the petitioner and the order would have to be declared unsustainable in view of the provisions contained in Clause 7(ii) of Public Distribution System (Contol) Order 2001 which lays down in clear terms that before passing of any order of cancellation of licence, the authority concerned has to grant adequate and reasonable opportunity to the licensee to make out his case.

Learned counsel appearing for the State fairly submits that the copy of enquiry report was never served but it has been referred in the show cause and the charges have been framed on the basis of the enquiry report.

In my view, that would make the matter even worse. If

the charges have been framed on the basis of enquiry and if the order has been passed on the basis of such enquiry report which has never been supplied to the petitioner then this Court would have to hold that adequate opportunity was not granted in terms of Clause 7(ii) of Public Distribution System (Contol) Order 2001.

Accordingly this writ application succeeds. The impugned order is quashed and set aside. However, since the copy of the enquiry report has now been brought on record as Annexure-A along with the complaints of the beneficiaries, the petitioner would be required to file a fresh reply to the show cause notice which should be considered by the licensing authority and a fresh order should be passed on its own merit and in accordance with law within a period of three months from the receipt of such reply along with the copy of this order.

Personal appearance of the Sub Divisional Officer is dispensed with.

(Dr. Ravi Ranjan, J.)

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