

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17649 of 2012

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Ram Krishn Prasad Yadav @ Ram Kishun Yadav, Son of Sri Ram Lakhan Yadav,
Resident of Village Gajragarh, P.S. Barachatti, District Gaya.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Food and Civil Supplies, Government of Bihar, Patna.
2. The Divisional Commissioner, Magadh Division, Gaya.
3. The District Magistrate, Gaya.
4. The Sub-Divisional Magistrate, Sherghati, District Gaya.
5. The Block Supply Officer, Barachatti, District Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Suraj Narain Yadav
Mr.Sanjay Kumarr

For the Respondent/s : Mr. Subhash Singh, AC to AAG-15

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 12-01-2016

Heard Mr. Suraj Narain Yadav, learned counsel
appearing for the petitioner and Mr. Ram Subhash Singh, learned
Assisting Counsel to Additional Advocate General No.15 for the
State.

The petitioner is a licensee under the Public Distribution
System (Control) Order, 2001 (hereinafter referred to as 'the
Control Order') which has been enforced in the State of Bihar Vide
GSR -1 dated 20.2.2007.

The petitioner is aggrieved by the order passed by the
Licensing Authority under 'the Control Order' i.e. the Sub-
Divisional Officer, Sherghati dated 21.1.2008, whereby his licence



bearing No.12/85 has been cancelled which order has been communicated vide Memo dated 22.1.2008 and forms part of Annexure-5. The petitioner is also aggrieved by the order of the appellate authority i.e. the District Magistrate, Gaya passed in Case No.23 of 2008 whereby the order passed by the licensing authority has been affirmed and the appeal has been dismissed vide order passed on 27.4.2012 which is impugned at Annexure-6.

Mr. Yadav, learned counsel appearing for the petitioner has submitted that the allegations are not supported by evidence and the appellate authority has dismissed the appeal without application of mind.

A counter affidavit has been filed on behalf of the respondents in which it is stated that the show cause was ornamental and was not found satisfactory.

I have heard learned counsel for the parties and I have perused the records.

The cancellation of licence of the petitioner rests on four counts, namely:

- (a) The shop was closed;
 - (b) The petitioner abuses the consumers;
 - (c) The petitioner is always in a state of intoxication;
- and

(d) Irregularities in distribution of *Antyodaya* and BPL food-grains.

The show cause notice is impugned at Annexure-3 and whereby the Sub-Divisional Officer has merely directed the petitioner to file his reply. The show cause notice dated 18.1.2008 in Supply Case No.02 of 2008 issued by the Sub-Divisional Officer, Sherghati is not against a proposed cancellation.

Clause 7 of 'the Control Order' which was in force at the relevant time i.e. in the year 2008 mandated under sub-clause (iv) that it shall be necessary for the licensing authority to ask a show cause before suspending a licence and that the licensee will be given a reasonable opportunity of stating his case against a proposed cancellation. This clause-7 of 'the Control Order' was amended vide Notification dated 23.6.2011 and the provisions of Clause-7 as it presently stands specifically provides that no order of cancellation shall be made unless the licensee is given a reasonable opportunity of stating his case against the proposed cancellation.

The statutory provisions underlying Clause-7 as it stood before amendment and the provisions as it stands today after amendment effected on 23.6.2011 mandated a reasonable opportunity to the licensee against the proposed cancellation. Apparently the show cause notice present at Annexure-3 merely

requires the licensee to respond to the charges and is not a show cause against the proposed cancellation. The petitioner has responded to the show cause and which may not be to the satisfaction of the licensing authority but it did not bestow any power on the licensing authority to cancel the licence in absence of any show cause notice against proposed cancellation.

On this short count and in view of the apparent statutory violation by the licensing authority, the order of cancellation of licence passed by the licensing authority as affirmed by the appellate authority vide orders impugned at Annexures 5 and 6 respectively cannot be upheld and are accordingly set aside.

This writ petition is allowed.

(Jyoti Saran, J)

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