

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5520 of 2015

=====

Ram Chandra Prasad Yadav, son of late Bindhan Yadav @ Budhu, resident of Village-Sureriya Kala, P.S.-Fatehpur, Block-Fatehpur, District-Gaya.

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Food & Civil Supply Department, Old Secretariat, Patna.
2. The Secretary, Food & Civil Supply Department, Old Secretariat, Patna.
3. The District Magistrate, Gaya.
4. The Sub-Divisional Magistrate, Sadar, Gaya.
5. The District Supply Officer, Gaya.
6. The Block Supply Officer, Fatehpur, District-Gaya.

.... Respondents

=====

Appearance :

For the Petitioner : M/s Rama Kant Sharma, Sr. Advocate and
Lakshmi Kant Sharma, Advocate

For the State : Mr. Rajiv Roy, G.P. 5

=====

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 05-01-2016

Heard learned counsel for the petitioner and the State.

Petitioner is aggrieved by the order dated 16.5.2012 passed by the Sub Divisional Officer – cum – licensing authority, Sadar Gaya as well as the appellate order dated 19.2.2015 passed by the Collector, Gaya in Supply Appeal No. 11/2014. The licensing authority, vide Annexure 1, has cancelled the Licence No. 41/2007 granted to the petitioner for running a PDS shop whereas the appellate authority has upheld the order of the licensing authority and appeal has been dismissed. The petitioner had on earlier occasion, approached this Hon'ble Court by filing C.W.J.C. No. 13930 of 2012

assailing the order passed by the licensing authority. However, in view of petitioner was permitted to prefer appeal before the Collector, Gaya which has also been decided against him vide impugned order dated 19.2.1015 (Annexure 7).

At the time of hearing a preliminary objection has been raised by the State that the petitioner has moved this Hon'ble Court without availing the statutory remedy of revision.

Per contra learned counsel for the petitioner has submitted that in fact the entire proceeding is in teeth of the mandate of the Clause 7(II) of the PDS Control Order 2001 as reasonable opportunity to explain his case against the proposed cancellation was never provided to the petitioner in the beginning.

Learned counsel has placed reliance upon an unreported decision of a learned Single Judge rendered in **C.W.J.C. No.1058 of 2015 (Suresh Prasad Vs. The State of Bihar & ors.)** to demonstrate that after the appellate stage also the writ application was entertained and allowed without directing the petitioner to avail remedy of revision in view of the fact that the principle of natural justice clearly appeared to have been violated by the authority concerned.

It is further submitted that from the show cause notice, a copy which has been appended as Annexure 2, it would appear that



the charges framed thereunder were based upon the inquiry conducted by the District Supply Officer, Gaya on 23.9.2011. However, a copy of the inquiry report was never supplied to the petitioner so that a proper reply to the charges could have been given by him. Learned counsel has placed reliance upon an unreported decision in this regard dated 2.4.2013 passed in **C.W.J.C. No. 9418 of 2011 (Sushil Kumar Bhandari Vs. The State of Bihar & ors.)** holding that non supply of inquiry report along with show cause notice which forms basis of passing an order of cancellation of licence would be a fatal lacuna as, in the opinion of this Court, only indicating charges for the notice would not be sufficient for filing the reply inasmuch as the nature and extent of materials collected during the course of inquiry would have to be known for filing a relevant purpose.

Learned counsel appearing for the State submits that the petitioner has replied to the charges, but that has been found to be correct by the licensing authority and order has been passed. However, though there is specific allegation in the writ application in paragraph 14 that the copy of the inquiry report was never supplied to the petitioner, there is no categorical reply on behalf of the State that the same was served upon him either along with the show cause notice or at any stage prior to passing of the impugned

order by the licensing authority.

That being the situation it has to be understood that allegation of the petitioner is correct that the inquiry report was never supplied to him. In such a situation, since this Court has already taken a view in **Sushil Kumar Bhandari (supra)**, I would have no hesitation in holding that the reasonable opportunity was never granted to the petitioner prior to passing the impugned order by the licensing authority and as such the order impugned has to go. Accordingly both are quashed and set aside.

The matter is remitted back to the Licensing Authority for taking a fresh decision in accordance with law after issuing a fresh show cause notice along with all the necessary documents, such as, copies of the statements of complaints of the consumers, if any, and a copy of the enquiry report. The petitioner would be at liberty to submit a proper reply thereof within the time granted. It is expected that the whole process would be completed within a period of three months from the date of receipt / production of a copy of this order. It is further made clear that the present order would not mean automatically resumption of supplies to the petitioner as the same would depend upon the nature of the order to be passed by the Licensing Authority. It is also made clear that in the show cause notice at least a week's time should be given for filing a reply.

However, if the petitioner fails to submit his reply within the time granted then the Licensing Authority would be at liberty to proceed in accordance with law even in his absence.

This writ application is allowed to the extent as indicated above.

(Dr. Ravi Ranjan, J)

Spd/-

U			
---	--	--	--