

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20578 of 2013

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Bhuneshwer Paswan, Son of Late Govardhan Paswan, Resident Of Village
- Aoura, Police Station - Bodh Gaya, District - Gaya

.... Petitioner

Versus

1. The State Of Bihar Through The Principal Secretary Department Of Food
And Consumers Protection, Government Of Bihar, Patna
2. The District Magistrate/Collector, Gaya
3. The Sub - Divisional Officer, Sadar Gaya, District - Gaya
4. The Block Supply Officer, Bodh Gaya, Distt. - Gaya

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Baxi S.R.P. Sinha, Sr. Advocate
	:	Mr. Sanjay Kumar, Advocate
	:	Mr. Rahul Nath, Advocate
For the State	:	Mr. Saroj Kr. Sharma, AC to AAG-5

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL ORDER

6 05-04-2016

Heard parties.

Petitioner is aggrieved by Annexure-3 which is an order dated 10.11.2011 passed by the Sub-Divisional Officer, Sadar, Gaya being the licensing authority, by which, the licence no. 20/07 has been cancelled. Petitioner, at the time of hearing, raises the sole issue that in view of non supply of enquiry report along with the show cause notice by which he was directed to explain the charges based upon such enquiry report dated 28.07.2011 within 24 hours, the impugned order is in violation of Principles of Natural Justice and also clause 7(ii) of the Public Distribution (Control) Order, 2001. Such statement has been made in paragraph 10 of the writ petition. In counter affidavit, paragraph 10 has been replied by saying that the show cause notice disclosing the charges levelled in the enquiry report was served upon

the petitioner. Meaning thereby, that it is admitted position that a copy of the enquiry report was never served upon the petitioner.

Learned counsel for the State has submitted that writ petition is fit to be dismissed on the ground that petitioner has approached this Court by filing an alternate remedy of statutory appeal.

Having regards to the facts and circumstances of this case, the aforesaid submission made on behalf of the State is noted only to be rejected. Upon appreciation of rival submission, two things appear. First is that a copy of enquiry report, upon which show cause notice is based and impugned order is passed, was never supplied to the petitioner. Secondly, only 24 hours time was granted to the petitioner to respond to the show cause notice which, in my considered view, is not a reasonable time. By now, it is well settled that non supply of enquiry report necessarily means that adequate opportunity was never given to the licensee if the order of cancellation is based upon that which is there in the present case.

Thus, this writ petition would succeed even on one of the two grounds, therefore, it will not be proper to relegate the petitioner to the appellate authority.

Accordingly, this writ application allowed. The impugned order is quashed and set aside. However, the licensing authority, if it so desires, would be at liberty to issue fresh show cause notice along with a copy of the enquiry report and would grant a reasonable time which should not be less than a week to the petitioner to file a reply to the show

cause notice. If the petitioner files reply then the grounds raised in the reply should be considered and reasoned order should be passed in accordance with law. If the petitioner do not file reply then the licensing authority would be at liberty to proceed to decide the case on its merit and in accordance with law. If such proceeding is initiated, it is expected that the entire exercise would be completed within a period of three months from the date of issuance of a fresh show cause notice, if any. However, in case, no show cause notice is issued within two months from the date of receipt/ production of a copy of this order then supplies to the petitioner should be restored.

(Dr. Ravi Ranjan, J.)

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