

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5548 of 2015

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Sunil Kumar Gupta, son of Late Kusum Chandra Prasad Gupta, resident of Purani Arwal, P.S.- Arwal, Distt.- Arwal.

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Food & Consumer Protection Department, Bihar, Patna.
2. The District Magistrate-Cum-Collector, Arwal.
3. The Sub-Divisional Officer, Arwal.
4. The Block Supply Officer, Arwal.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. N. K. Agrawal, Sr. Advocate
Mr. Dhananjaya Nath Tiwari, Advocate
For the Respondent/s : Mr. Gautam Bose, AAG-8
Mr. Rohit Mishra, AC to AAG-8

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL JUDGMENT

Date: 21-06-2016

Heard parties.

The petitioner seeks quashing of Annexure-1, which is an order dated 3.03.2015 passed by the Sub-Divisional Officer, Arwal by which his licence no.02/2010 granted for running of PDS shop has been cancelled.

At the time of hearing, two grounds have been raised by the petitioner. First is that the order has been passed upon the direction of the District Magistrate who had already examined the matter. His order has been appended as Annexure-4. It is contended that the District Magistrate has already examined the matter and directed the Sub-Divisional Officer, Arwal to take steps for cancellation of licence of the petitioner on the basis of the enquiry



report of the District Panchayati Raj Officer and on the basis of the complaints made by the beneficiaries. It is contended that such action of the District Magistrate was totally unwarranted as he happens to be the appellate authority. Secondly, it is contended that even if the District Magistrate had directed to pass order on the basis of the enquiry report and the complaints made by the beneficiaries, a copy of the aforesaid enquiry report was never provided to the petitioner before taking a final decision in this regard. On such assertion having been made, the State authorities were directed to make specific reply to the averments made in paragraph 14 of the writ petition regarding non-supply of the enquiry report.

It is contended on behalf of the State that a supplementary counter affidavit has been filed on 20.06.2016 and the statement has been made in paragraph 6 thereof that copy of the enquiry report could not be served upon the petitioner, however, its findings have been mentioned in the show cause notice.

In such a situation, in the consider view of this Court, order impugned cannot be held to be sustainable in law. It is well settled that if a copy of the enquiry report, which has formed basis for cancellation of licence, was not served along with the copies of the complaints of beneficiaries, if any, upon the licensee then he would not have been in a position to file a proper reply to the show cause notice and, as such, it can safely be construed that a reasonable opportunity was not given to the licensee. A reference in this regard is

made to a decision of this Court rendered in ***Brahmdeo Rai Vs. State of Bihar and Ors. [2013 (2) PLJR 706]***.

Accordingly, this writ application succeeds. The impugned order as contained in Annexure-1 is quashed and set aside.

However, the matter is remitted back to the licensing authority for fresh consideration in accordance with law. He would supply a copy of the inquiry report along with copies of complaints, if any, and grant another opportunity to the petitioner to file a reply to the show cause notice and upon consideration of grounds raised by him and the materials available on record, a fresh and reasoned order would be required to be passed by him on its own merit and in accordance with law.

It is expected that the entire exercise would be completed within a period of three months from the date of receipt/production of a copy of this order.

(Dr. Ravi Ranjan, J)

V.K. Pandey/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	29.06.2016
Transmission Date	N.A.