

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1415 of 2014

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Raj Kishore Sharma, Son of Late Suraj Sharma Resident of Village and P.O.
Dumari, P.S. Sarai, District- Vaishali

.... Petitioner

Versus

1. The State Of Bihar
2. The Collector-Cum-District Magistrate, Vaishali
3. The Sub-Divisional Officer, Mahua, Vaishali
4. The Block Supply Officer, Rajapakar, Vaishali

.... Respondents

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Appearance :

For the Petitioner : Mr. Raghwanand, Advocate
For the State : Mr. Mritunjay Kumar, AC to SC 23

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 28-06-2016

Heard learned counsel for the petitioner and the State.

Petitioner is aggrieved by the order dated 3.7.2012 passed by the Sub Divisional Officer – cum – licensing authority, Mahua, as contained in Annexure 3, by which his PDS licence bearing no. 34/07 has been cancelled. He also assails the appellate order dated 10.12.2013, as contained in Annexure 4, by which his appeal has been dismissed.

It is submitted on behalf of the petitioner that show cause notice was never served upon him and order has been passed without granting reasonable opportunity to the petitioner whereas from perusal of the appellate order it appears that show cause notice



was issued in January, 2012 and the cancellation order was passed in July, 2012, i.e., almost after six months but the appellate authority does not appear to have answered the issue as to whether, from perusal of records, the show cause notice appears to have been served upon the petitioner or not. It is also contended that even a copy of the show cause notice, which has been appended as Annexure C and which stands referred in the impugned order contained in Annexure 3, does not disclose that it has been issued with respect to purported exercise of cancellation of licence of the petitioner, thus, is vague.

I find force in the submission raised on behalf of petitioner. By now it is well settled that as per Clause 7(II) of the PDS Control Order, 2001 reasonable opportunity has to be given to the licensee to make out his case before proceeding to cancel his licence. The issue is no longer *res integra*. Courts on several occasions have held that if the notice does not disclose that it is being issued for the proposed action for cancellation of licence, it has to be held to be vague and has to be finally held that no adequate opportunity was given to the licensee before taking final decision. A reference in this regard is made to an unreported decision of this Court dated 19.1.2016 passed in **C.W.J.C. No. 6826 of 2015 (Arvind Paswan Vs. The State of Bihar)**. So far the second issue as to whether the show cause notice was served upon the petitioner or

not, the appellate authority did not take pain to look into the records to satisfy itself on the issue. He has merely noticed that the show cause notice was issued in the month of January, 2012 but the question was whether it was served or not. Even if an order was eventually passed one year after issuance of show cause notice but, the show cause notice was never served upon the petitioner, the order has to be held to be bad and in violation of principle of natural justice as it is the service of notice which matters not its issuance. In the counter affidavit also it has nowhere been stated that show cause notice was ever served upon the petitioner.

Accordingly, this writ application succeeds on both counts. The impugned order contained in Annexure 3 and 4 are quashed and set aside and the licence of the petitioner is restored.

However, this order would not come in way of the licensing authority concerned in initiating a fresh proceeding, if it so desires.

(Dr. Ravi Ranjan, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
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