

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10128 of 2014

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Brij Nandan Yadav Son of Late Mahadeo Yadav resident of Village - Nauranga,
P.S. Muffasil, District - Gaya

.... Petitioner

Versus

1. The State of Bihar
2. The Collector, Gaya
3. The Sub - Divisional Officer, Sadar, Gaya
4. The District Supply Officer, Gaya
5. The Additional District Supply Officer, Sadar, Gaya
6. The Block Supply Officer, Sadar, Gaya

.... 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. GP5- RAJIV ROY

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 29-06-2016

I have heard the parties and perused the records of the case.

Petitioner is aggrieved by the order dated 09.06.2008 passed by the licensing authority contained in Annexure 2, by which his licence no. 13/93 has been cancelled and also the order dated 02.03.2014 passed by the appellate authority in Supply Appeal No. 5/2013 appended as Annexure 1, by which his appeal has been dismissed and the order passed by the licensing authority(Annexure 1) cancelling his licence has been upheld.

It is not the first time that the petitioner has approached this Court as on earlier occasion he had approached this Court by filing C.W.J.C. No. 2565 of 2010 which was disposed of vide Annexure 6



dated 19.04.2011 granting liberty to the petitioner to pursue his remedies in appeal. The petitioner again approached this Court by filing C.W.J.C. No. 2744 of 2012 which was disposed of vide Annexure 8 dated 09.08.2012 granting liberty to the petitioner to file statutory revision.

The petitioner was served with a show-cause notice dated 07.04.2008 directing him to show-cause as to why an action suspending his licence and cancelling the same should not be taken against him by the authorities. The show-cause notice did not refer any inquiry having been held in that regard by any officer. The petitioner submitted in his reply. Copies of the show-cause notice as well as the reply have been appended as Annexures 3 and 4. However, vide order dated 09.06.2008 contained in Annexure 2, finding the petitioner's reply not to the satisfaction, his licence no. 13/93 was cancelled. In the aforesaid order it is referred that some inquiry was conducted by the Assistant District Supply Officer who found certain irregularities and, thus, a show-cause notice was issued. The charges were based upon the complaint/statement made by the beneficiaries. However, surprisingly, the show-cause notice, as discussed above, did not refer to any inquiry having been held. The petitioner approached this Court, however, vide Annexure 6 he was granted liberty to avail the remedy of appeal. The petitioner



preferred the appeal which was rejected vide Annexure 7 dated 02.12.2011. The petitioner again approached this Court by filing C.W.J.C. No. 2744 of 2012, however, the same was disposed of vide order dated 09.08.2012 granting liberty to the petitioner to avail the statutory remedy of revision vide Annexure 8. The revision filed by the petitioner was allowed. The order of the appellate authority dated 02.12.2011 was set aside and the matter was remitted back to the appellate authority to take a fresh decision. The revisional authority had noticed that the cancellation of licence was based upon an inquiry report of the ADSO which was based upon the statement of four persons, who were not the complainants in the matter. The petitioner's contention that the coupons were submitted in the office was not cross-checked by any government authority. The persons whose statements formed the basis of the inquiry report, had later on retracted from their statements by saying that the complaint was made only for settling the score against such PDS dealer.

On such remand, the impugned order as contained in Annexure 1 has been passed by the appellate authority stating that there may be a possibility that later on the beneficiaries, who belonged to weaker section, might have retracted from earlier version on any threat or allurements, and, therefore, the further statement is not beyond the cloud of doubt. It is also observed in the

appellate order that neither before the licensing authority nor before the appellate authority, the beneficiaries were made to appear in person to clear the doubt.

In my view, such observation of the appellate authority is erroneous as he failed to appreciate that the said persons whose statements were recorded by the inquiry officer, were never produced in person before the licensing authority to corroborate their statements made before the inquiry officer. Then the same analogy would be applicable in such situation also. Two standards cannot be applied by the appellate authority. Yardstick should be one and the same. That apart, he completely failed to appreciate Annexure 5 which is report contained in the letter dated 16.11.2013 of the Sub Divisional Officer-cum-licensing authority, Sadar, Gaya addressed to the District Magistrate, Gaya(the appellate authority). It appears that he was directed to hold certain inquiry upon which the licensing authority had stated that he had personally examined the report and did not find any unused coupon. That apart, he also examined three persons who had earlier made complaint before the inquiry officer, i.e., the ADSO, who had categorically said that they have filed affidavits denying such averment made against the petitioner and have supported their affidavits. This report has not at all been considered by the appellate authority.

In my view, had the appellate authority considered the report, he would have reached to some other conclusion after categorical denial by the beneficiaries as, in such a situation, there was no occasion to hold that the order passed by the licensing authority was correct. The licensee cannot be held to be guilty on assumption that the witnesses might have been threatened or allured unless such evidence is on record.

Accordingly, this writ application succeeds and the impugned orders passed by the licensing authority as well as the appellate authority contained in Annexure 1 and 2 are quashed and set aside.

In my view, since the petitioner's licence was cancelled in 2008 and he has remained ousted from the department for about eight years, he has already suffered a lot as there has already been much atonement. Accordingly, the licensing authority is directed to immediately restore the licence of the petitioner and supplies should be resumed.

(Dr. Ravi Ranjan, J)

SC/-

AFR/NAFR	NAFR
CAV DATE	NA
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