

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5293 of 2014

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Md. Yusuf Alam, Son Of Late Sk. Ismile Resident Of Village- Chakai, Police Station- Joki Hat, District- Araria

.... Petitioner

Versus

1. The State Of Bihar
2. The Collector, Araria
3. The Sub-Divisional Officer, Araria
4. The Block Supply Officer, Joki Hat

.... Respondents

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Appearance :

For the Petitioner : Mr. N. K. Agrawal, Sr. Advocate,
Mr. D. N. Tiwari, Advocate

For the State : Mr. Kumar Pankaj, A.C. to S.C. 21

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 01-03-2016

Heard the parties.

Petitioner is aggrieved by the order dated 03.01.2014

(Annexure-5) passed by the Collector, Araria in Misc. Appeal No.2 of 2006-07 which was preferred by the petitioner under Clause 28 of the Bihar Trade Articles (Licenses Unification) Order, 1984 (hereinafter referred to as “the Unification Order”) against the order dated 13.09.2006 passed by the Sub-Divisional Officer, Araria by which his licence granted under the Unification Order as well as the agreement for running the PDS shop was cancelled with immediate effect.

The licensing authority in the impugned order himself



has stated that before passing of the order under Clause 11(2) of the Unification Order, a show cause notice was mandatorily required to be issued and which was violated, therefore, the order was stayed and in the meantime, licence was again suspended and, thereafter, suspension was revoked. Thereafter, again on 27.07.2013 a show cause notice was issued to the petitioner asking as to why his licence should not be cancelled to which the petitioner has responded. However, the appellate authority appears to have himself considered the charges levelled under the show cause notice issued on 27.07.2013 and has come to the conclusion in paragraph no.8 of the impugned order that on consideration of the aforesaid, the charges upon the petitioner appears to have been fully proved and, thereafter, in paragraph no.9 he has upheld the decision of the concerned authority which was passed in the year 2006 and has cancelled the licence no.54 J/ 85 and new licence no.78 J/ 07.

In my view, the order suffers from diverse fatal lacuna. Once the position is admitted that the order dated 30.09.2006, as contained in Annexure 1 passed by the Sub-Divisional Officer, Araraia was passed without issuance of show cause notice and hence under Clause 11(2) of the Unification Order was not sustainable in law, the same could not have been upheld on any ground whatsoever. That order has to go in view of the violation of



mandatory provision as aforesaid. So far the subsequent show cause notice is concerned, the appellate authority appears to have considered itself as the Licensing Authority and has recorded a finding that charges made against the petitioner vide the show cause notice dated 27.07.2013 are fully proved. In my view, that could also not have been done as he is the appellate authority against the order of the Licensing Authority under Clause 15 (a) of the Public Distribution System (Control) Order, 2001.

By way of last resort, learned counsel for the State has submitted that the petitioner has approached this Court without exhausting the alternative remedy of revision under Clause 15(b) of the Public Distribution System (Control) Order, 2001.

However, the submission raised on behalf of the State is noted only to be rejected as Annexure 1 was not passed under the Public Distribution System (Control) Order, 2001 rather at the time of such order the aforesaid Control Order was not in existent as it was enforced in the year 2007 and so far the other finding recorded in view of the show cause notice dated 27.07.2013 is concerned, that has not been recorded by the Licensing Authority but by the appellate authority, who, as I have already held, was not competent to do so, no purpose would serve if petitioner is relegated to the revisional authority as the order itself is without jurisdiction.

Thus, in my view, the appellate order cannot be sustained and, accordingly, the same is quashed and set aside. The impugned order as contained in Annexure 1 admittedly having been passed without issuance of show cause notice on the petitioner is also quashed and set aside. However, the Licensing Authority would be at liberty to proceed to decide the issue in which the show cause notice has already been given to the petitioner vide memo no. 554 R dated 27.07.2013, as contained in Annexure 3, on its own merit and in accordance with law without being prejudiced by the finding recorded by the appellate authority in the impugned order.

However, if no order is passed within a period of two months from the date of receipt/production of a copy of this order with respect to the show cause notice issued on 27.07.2013 vide Annexure 3 then the petitioner would be entitled for resumption of supplies which would be subject to the final result of such proceeding.

This writ application stands allowed.

Sanjay-II/-

(Dr. Ravi Ranjan, J)

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