

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11178 of 2014

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Srikant Singh Son of Late Hargovind Singh Resident of Village- Teuri, P.S-
Manpur, District- Nalanda

.... Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Food and Civil Supplies, Government of Bihar, Patna.
3. The Commissioner, Patna Division, Patna.
4. The Collector, Nalanda at Biharsharif.
5. The Sub- Divisional Officer, Nalanda at Biharsharif.
6. The Block Supply Officer, Biharsharif, District- Nalanda

.... Respondents

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Appearance :

For the Petitioner : Mr. Ajey Kumar, Advocate

For the State : Mr. Amit Kumar Anand, AC to GP 15

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 12-01-2016

Heard learned counsel for the petitioner and the State.

The petitioner's licence granted for running PDS shop was cancelled vide order dated 02.06.2006, as contained in Annexure 3, passed by the Sub-Divisional Officer-cum-Licensing Authority, Nalanda at Biharsharif(respondent no. 5). The order was assailed by filing an appeal before the Collector, Nalanda which was kept pending for 6-7 years and, ultimately, vide order dated 19.10.2013, as contained in Annexure 4, on the ground that the impugned order was passed on the basis of vigilance enquiry and not on the basis of the SDO's inspection, the matter was remitted by him for fresh consideration. Thereafter, when nothing was being done, the



petitioner approached this Court by filing the present writ petition in the year 2014 and during the pendency of this writ petition the order has been passed on 31.07.2015 by the Sub-Divisional Officer-cum-Licensing Authority, Nalanda at Biharshaf(respondent no. 5), as contained in Annexure 8.

A counter affidavit has been filed on behalf of the respondent nos. 4, 5 and 6.

I.A. No. 7924 of 2015 has been filed by the petitioner for amendment in the writ petition as now he wants to challenge the final order passed by the Sub-Divisional Officer-cum-Licensing Authority, Nalanda at Biharshaf(respondent no. 5) upholding his earlier order of cancellation of licence of the petitioner.

In view of the fact that the order has been passed during the pendency of the writ petition, the prayer is allowed. The petitioner is permitted to assail Annexure 8. Let the amendment sought in paragraph 1 of I.A. No. 7924 of 2015 and the averments made in support thereof form part of the writ petition.

In view of the counter affidavit already having been filed on behalf of the respondent nos. 4, 5 and 6 and, vide Annexure 8, the Sub-Divisional Officer-cum-Licensing Authority, Nalanda at Biharshaf(respondent no. 5) has held that there is no reason to differ from the stand taken earlier by the petitioner, the present writ

application is being considered on its own merit without granting further adjournment to learned counsel for the State for again filing a counter affidavit.

The writ petitioner has assailed the earlier order, as contained in Annexure 3, as well as the subsequent final order passed by the passed by the Sub-Divisional Officer-cum-Licensing Authority, Nalanda at Biharshaf(respondent no. 5), as contained in Annexure 8 to the aforesaid Interlocutory Application, as discussed above, on diverse grounds.

It is contended on behalf of the petitioner that the impugned orders have been passed by the licensing authority only on the basis of a report of the Vigilance Team constituted by the Cabinet (Vigilance) Department without any application of his own judicial mind. Secondly, it is contended that it is apparent from the show-cause notice itself, a copy of which has been appended as Annexure 1, that the said report of the Vigilance Team was not enclosed with the show-cause notice supplied to the petitioner so that a proper reply could have been filed by him, however, in response to the show-cause notice the petitioner has filed his reply, a copy of which has been appended as Annexure 2 to the writ application defending his case that the Vigilance Team had never visited his shop, therefore, there was no occasion for him to produce the stock register and other



documents and registers before it. The petitioner has taken this ground in paragraphs 8 and 19 of the writ petition, however, in the counter affidavit no specific reply thereof has been given by the State. A copy of the report of the Vigilance Team has also not been brought on record by the State to show that the petitioner's shop was visited and enquiry was held with respect to it by the said Vigilance Team. It is next contended that despite a detailed reply having been filed there is no consideration of the grounds raised by the petitioner at all either in Annexure 3 or Annexure 8 as simply one sentence has been devoted in Annexure 3 that the reply furnished by the petitioner is not satisfactory. Even after remand of the matter by the appellate authority, the grounds raised by the petitioner in the reply to the show-cause notice have not been considered and the licensing authority has simply come to the conclusion that the earlier order was correct.

A detailed counter affidavit has been filed on behalf of the respondent nos. 4, 5 and 6 defending the action taken by the Sub-Divisional Officer-cum-Licensing Authority, Nalanda at Biharshaf(respondent no. 5) while passing the impugned order as contained in Annexure 3, however, there is no specific averment regarding the allegations of the petitioner in paragraphs 8 and 19 of the writ petition. In paragraph 8 of the counter affidavit, it is simply stated that Annexure 2 is a matter of record and the reply to the show-



cause notice filed by the petitioner was not found to be satisfactory, whereas there is no specific reply to the averment made in paragraph 19 of the writ petition. The statements made in paragraphs 17 or 18 of the counter affidavit do not specifically mention the reply to the averment made by the petitioner in paragraph 19 of the writ petition rather it is simply stated that the aforesaid statement is incorrect but the report of the Vigilance Team has not been brought on record to substantiate it.

Upon consideration of the rival submissions of the parties, I find force in the contention made on behalf of the petitioner for the following reasons. Firstly, it is apparent that there is no consideration of the grounds raised by the petitioner in the impugned orders passed by the licensing authority. The petitioner has specifically mentioned that the Vigilance Team had never visited his shop but the same has not been denied and substantiated by stating otherwise and bringing the report on record. That apart, it does not appear from the show-cause notice that the report of the Vigilance Team which had formed the basis of cancellation of licence of the petitioner was ever supplied to him as Annexure 1 does not have any enquiry report as enclosure and this has also not been specifically answered in the counter affidavit by bringing on record any material to show that the same was supplied to the petitioner.



It is well settled that if the action of the authorities is going to visit consequence upon a person then a show-cause notice would be must and consideration of the grounds raised by such person in his reply to such show-cause would also be required and reasons should also be recorded as to why the grounds raised are not found tenable. This is further intriguing as to why the appeal was kept pending for 6-7 years and even thereafter, till the writ petition was filed by the petitioner before this Court, no action was taken by the Sub-Divisional Officer-cum-Licensing Authority, Nalanda at Biharsharif(respondent no. 5) by passing a proper order in compliance of the order of the appellate authority.

Similar view was taken by this Court while disposing of the writ petition bearing no. C.W.J.C. No. 12140 of 2011(Siyasharan Singh v. The State of Bihar and others) vide order dated 31.01.2013. In that case, this Court has observed that the report of the enquiry conducted by the Vigilance Department merely indicates general allegation made against several PDS dealers.

Accordingly, this writ application succeeds and the impugned orders as contained in Annexures 3 and 8 are quashed and set aside.

(Dr. Ravi Ranjan, J)

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