

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13067 of 2014

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Arjun Dass, son of Sri Hardeo Dass, resident of Village - Manas Naya Panapur,
Panchayat - Manas, P.S. - Akilpur, Block - Danapur, District - Patna.

.... Petitioner

Versus

1. The State of Bihar through its Chief Secretary.
2. The Commissioner Patna Division, Patna.
3. The District Magistrate, Patna.
4. The Sub-Divisional Officer, Danapur, Patna.
5. The Block Supply Officer, Danapur, Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ram Kishore Singh, Advocate

For the Respondent/s : Mr. D.K. SINHA, AAG-2

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 12-01-2016

Heard parties.

The petitioner seeks quashing of the order dated 23.07.2013 as contained in Annexure-3 passed by the Sub-Divisional Officer-cum-licensing authority, Danapur by which his licence no.20/07 granted for running P.D.S. shop has been cancelled. The petitioner challenges the aforesaid order on diverse grounds.

It is contended that a show cause notice was never served upon him as at the time when the notice was issued, he was seriously ill and suffering from jaundice and was under treatment in Sadar Hospital, Danapur. The petitioner has appended a prescription as well as certificate granted by the said hospital vide Annexure-2. It is next contended that the enquiry conducted by the Block Supply Officer,

Danapur on 28.05.2013 and the irregularities found by him in his report has formed the basis of charges levelled against the petitioner but a copy of report was never served upon him.

A detailed counter affidavit has been filed, however, learned AAG-2 has pointed out that the petitioner has miserably failed to show that the first show cause notice has not served upon him as there was no explanation for that, however, it is also a fact that even then a second show cause notice was also issued by the licensing authority and the petitioner has claimed that he was ill and under treatment of a Govt. hospital, therefore, he could not receive it and no reply could be filed. That apart, it further does not appear from the impugned order that even the charges were dealt with and considered and, only thereafter, the petitioner was found guilty. It appears from the impugned order that, since the petitioner did not respond to the charges by filing a reply to the show cause notice, the same was presumed to be correct, which can also not be permitted.

Learned AAG-2 next contends that the petitioner should have filed statutory appeal and since he has directly come to this Court by filing writ application on that ground alone, this writ application should be dismissed.

I do not find any force in this submission as this Court is satisfied that, in view of the petitioner's explanation and the nature of order, the order impugned suffers from at least two vices, v.i.z, a

reasonable opportunity was not given to the petitioner and the order has been passed without application of mind by the Sub-Divisional Officer. Therefore, in above view of the matter, it would not be serve any purpose if the matter is relegated to the appellate authority.

Accordingly, this writ application succeeds. The impugned order as contained in Annexure-3 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 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.

It is made clear that this order would not mean automatic resumption of the supply to the petitioner as the same would depend upon the nature of the order which would finally be passed by the licensing authority.

(Dr. Ravi Ranjan, J)

V.K. Pandey/-

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