

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3309 of 2015

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Shyam Kishore Mishra, Son of Adhija Mishra, resident of village- Noneyam
Mauze Tola, P.S. Areraj, Gram Panchayat North Noneyam, Block Paharpur,
District- East Champaran.

.... Petitioner

Versus

1. The State of Bihar
2. The Commissioner, Tirhut Division, Muzaffarpur.
3. The Collector, East Champaran, Motihari.
4. The Sub-Divisional Officer, Areraj, East champaran, Motihari.
5. The Block Supply Officer, Paharpur, East Champaran, Motihari.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sandeep Kumar, Advocate
Mr. Rakesh Kumar, Advocate
Mr. Manoj Kumar, Advocate
Mr. Avinash Kumar, Advocate
For the Respondent/s : Mr. Nawal Kishore Singh, SC-2

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL JUDGMENT

Date: 12-07-2016

Heard learned counsel for the petitioner and the State.

The petitioner seeks quashing of the order dated 22.07.2011, as contained in Annexure-4, passed by the Sub-Divisional Officer-cum-licensing authority, Areraj, East Champaran by which his licence no. 19/2007 granted for running P.D.S. shop has been cancelled. He also seeks quashing of the appellate order dated 4.01.2013, as contained in Annexure-5, passed by the Collector, East Champaran, Motihari as well as the revisional order dated 15.12.2014, as contained in Annexure-6, passed by the Commissioner, Tirhut Division, Muzaffarpur by which the order passed by the licensing authority has been upheld and the appeal and the revision were

dismissed.

At the time of hearing, learned counsel for the petitioner submits that the order impugned suffers from diverse flaws. First is that copy of the enquiry report dated 14.06.2011 of the Block Supply Officer and his opinion dated 20.07.2011 were never served upon the petitioner and, thus, proper and adequate opportunity for filing effective reply was not given to him. He next submits that even the reply filed by the petitioner has not been considered in proper perspective as none of the grounds raised by the petitioner has been dealt with and considered and it has simply been stated that the reply is not satisfactory.

On such assertions having been made on behalf of the petitioner, the State respondents were directed to produce the original records of the case which have been produced today for perusal of this Court. However, learned counsel for the State has miserably failed to point out from the records that the copies of the aforesaid report as well as opinion were ever served upon the petitioner before taking a final decision. Thus, in my view, this writ application is fit to be allowed on the aforesaid count itself. Apart from the above, non-consideration of grounds raised by the petitioner also makes the impugned order passed by the licensing authority arbitrary in nature being not only in violation of principles of natural justice but also in violation of Clause 7 (ii) of Public Distribution System (Control) Order, 2001 which mandates that reasonable opportunity should be

granted to a licensee for defending his case before cancellation of licence, which necessarily mean that the grounds raised in the reply to the show cause notice should be considered and speaking order should be passed.

Accordingly, this writ application succeeds. The impugned order as contained in Annexure 4, 5 and 6 are quashed and set aside.

However, the matter is remitted back to the licensing authority for fresh consideration after furnishing the copies of the enquiry report dated 14.06.2011 and the opinion dated 20.07.2011 of the Block Supply Officer and granting him further opportunity for filing a fresh reply and a final decision should be taken after consideration of grounds raised by the petitioner in his reply. The order should be reasoned and speaking one.

It is expected that entire exercise would be completed within a period of three months from the date of receipt/production of a copy of this order. However, if the same is not done within three months, then the petitioner's supplies would be required to be restored till a final decision taken in the matter.

(Dr. Ravi Ranjan, J)

V.K. Pandey/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	5.08.2016
Transmission Date	N.A.