

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1690 of 2016

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Nawal Kishore Singh Son of Bhuneshwar Singh, Resident of Village - andama,
P.S. - Bahadurpur, District -Darbhanga.

.... Petitioner

Versus

1. The State of Bihar through Secretary, Department of Food and Civil Supply,
Govt. of Bihar.
2. Commissioner, Darbhanga Division, Darbhanga.
3. District Magistrate, Darbhanga.
4. SDO, Sadar Darbhanga cum Licensing Authority.

.... Respondents

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Appearance :

For the Petitioner : M/s Ajay Kumar Thakur, Md. Imtayaz Ahmed and
Amit Kumar, Advocates
For the State : Ms. Divya Verma, AC to AAG3

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 19-04-2016

Heard learned counsel for the petitioner and the State.

The petitioner seeks quashing of Annexure-1 which is
an order dated 07.01.2016 passed by the Sub-Divisional Officer-cum-
Licensing Authority, Sadar, Darbhanga by which his licence No.
21/07 granted for running a PDS shop has been cancelled.

Petitioner has stated that the inquiry report as well as
letter contained in Memo No. 706/C dated 22.2.2015 issued by the
District Magistrate, Darbhanga, which has been described in the
show cause notice, were never served upon the petitioner before
taking a final decision.



A counter affidavit has been filed. From perusal of record it appears that the District Magistrate has constituted an inquiry team which has conducted inquiry on 4.2.2015. The report was submitted before the District Magistrate which, vide Annexure B, which was analyzed and directions were given to the concerned. Petitioner's case also appears to have been considered and, after noting the summary of the inquiry report with respect to the petitioner, it appears that a direction was given to the Sub Divisional Officer, Sadar, Darbhanga to seek show cause and, thereafter, take action for cancellation of licence and lodge first information report. It has been admitted in paragraph 9 of the counter affidavit that such Memo No. 706/C dated 22.2.15 (Annexure B) was never served upon the petitioner.

In my view the procedure adopted suffers from two fatal lacuna. First is that the District Magistrate has constituted an inquiry team and that inquiry team in place of submitting its inquiry report before the Sub Divisional Officer – cum licensing authority has submitted the same before the District Magistrate who has analysed it and, thereafter, directed the licensing authority to seek show cause and take action for cancellation of licence and lodge a first information report etc. In my view that action was patently wrong as the licensing authority was required to consider the report and take



action in accordance with law on his own and not under the influence of the superior authority. The District Magistrate is not the licensing authority rather the Sub Divisional Officer is the licensing authority under the Control Order. In fact the District Magistrate is the appellate authority and by acting in such manner, since he appears to have already made up his minds that the licence of the petitioner should be cancelled and first information report should be lodged, he appears to have snatched away the appellate forum from him as, if the licensee moves before him in appeal against the impugned order, it would be meaningless for the aforesaid reasons. Secondly, admittedly the inquiry report as well as the report of the District Magistrate, which has played role in passing of the impugned order, were never served upon the petitioner.

Accordingly this writ application succeeds on both counts. The impugned order as contained in Annexure-1 is quashed and set aside.

The matter is remitted back to the licensing authority who shall first of all serve a copy of the inquiry report dated 4.2.2015 upon the petitioner and grant him another opportunity of filing a reply and to explain his case and, thereafter, he will proceed to decide the issue and pass a final order in accordance with law without being prejudiced by the direction given by the District Magistrate,

within a period of two months from the date of receipt / production of
a copy of this order.

(Dr. Ravi Ranjan, J)

Spd/-

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