

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.24616 of 2013

Sanjay Kumar S/O Anandi Mahto, Resident Of Village- Musaharnia (Birta), P.S. Sonbarsa, District- Sitamarhi

.... Petitioner

Versus

1. The State Of Bihar
2. District Magistrate, Sitamarhi
3. Sub Divisional Officer, Sitamarhi
4. Deputy Collector Land Reforms, Belsand Sitamarhi
5. Block Supply Officer, Sonbarsa, Sitamarhi

.... Respondents

with

Civil Writ Jurisdiction Case No. 24639 of 2013

Ramkripal Yadav, S/O Late Mahendra Yadav, Resident Of Village- Basatpur, P.S- Sonbarsa, District- Sitamarhi.

.... Petitioner

Versus

1. The State Of Bihar
2. District Magistrate, Sitamarhi.
3. Sub Divisional Officer, Sitamarhi, Sadar.
4. Block Development Officer, Bairstania, Sitamarhi.
5. Block Supply Officer, Sonbarsa, District- Sitamarhi.

.... Respondents

Appearance :

(In CWJC No. 24616 of 2013)

For the Petitioner : Mr. Yogendra Mishra,
Mr. Uma Kant Tiwary, Advocates

For the State : Mr. Vasant Vikas, A.C. to S.C. 23

(In CWJC No. 24639 of 2013)

For the Petitioner : Mr. Binod Kumar, Advocate

For the State : Mr. Kamlesh Kr. Sharma, A.C. to S.C. 22

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 29-03-2016

Heard parties.

Petitioners seek quashing of the order dated 20.11.2013 passed by the Sub-Divisional Officer, Sitamarhi by which the licence no.14/2007 of the petitioner of C.W.J.C. No.24616 of 2013 and licence no.12/2007 of the petitioner of C.W.J.C. No.24639 of 2013 for running the PDS shop have been cancelled.

It is contended on behalf of the petitioners that it would be apparent from the show cause notice that the inquiry report dated 09.09.2013 of the LRDC, Belsand which forms the basis of passing of the impugned orders was not enclosed along with the show cause notice and was never served upon the petitioners. That apart, even replies filed on behalf of the petitioners have also not been considered at all.

I find force in the submission raised on behalf of the petitioners.

Learned counsel for the State submits that the petitioners have jumped to file the writ applications without availing the statutory remedy of appeal.

In the present cases, it is apparent that there has been no consideration of the reply to the show cause notice filed on behalf of the petitioners as only one sentence has been devoted in the order that the reply is not satisfactory. In my view, that would not be sufficient. It is well settled that if the order of any authority is going to visit civil



consequence upon a person then show cause notice would be must and consideration of reply would also be must which would mean that if the authorities are going to reject the grounds taken by the licensee or such person then they have to record reason as to why those grounds could not find favour or why not found tenable by the authority concerned otherwise the order may suffer from vice of arbitrariness. That apart, the fact that copy of the inquiry report was never served upon them before taking a final decision stands admitted in view of the statement made in paragraph no.12 of the counter affidavit to the effect that there is no provision in law that mandates to provide a copy of the inquiry report to the petitioners.

In my view, such statement is totally misconceived and contrary to law. It has been held time without number that under Clause 7(ii) of the Public Distribution System (Control) Order, 2001 the reasonable opportunity has to be given to the licensee to make out his case before cancellation of licence. This Court has held on number of occasions that if the order is passed on considering the inquiry report and if such report was not supplied to the petitioner then it cannot be held that reasonable and adequate opportunity was given to the licensee as he/she would not be able to file proper reply in the absence of the same.

Accordingly, in my view, the impugned order is not

sustainable in law and, as such, the same is quashed and set aside. However, the matter is remitted back to the authority concerned which would supply the copy of the inquiry report as well as the copies of the complaints made by the beneficiaries, if any, to the petitioners and issue a fresh show cause notice granting reasonable time to the petitioners to respond to it and, thereafter, reasoned order would be required to be passed by it after consideration of the grounds raised in the reply filed by the petitioners. It is expected that the entire exercise would be completed within a period of three months from the date of receipt/production of a copy of this order.

Accordingly, these writ applications stand allowed.

(Dr. Ravi Ranjan, J)

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