

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1696 of 2017

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1. Kameshwar Pandey S/o Daso Pandey Resident of Village- Bahuara, P.S. Chewara, District- Sheikhpura.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Food & Civil Supply Department, Government of Bihar, Patna.
2. The District Magistrate, Sheikhpura.
3. The Sub- Divisional Officer, Sheikhpura.
4. The Block Supply Officer, Sheikhpura.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anujit Sinha

For the Respondent/s : Mr. S. RAZA AHMAD- AAG5

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 02-05-2017

Heard learned counsel for the petitioner and learned counsel for the State.

Original record with respect to the present case has been produced before this Court. It appears that the order has been passed on 29.2016 which is under challenge before this Court.

An enquiry was conducted in which several irregularities were found for running the PDS shop by the petitioner which led to initiation of proceeding against him and accordingly show cause dated 6.6.2013 was served upon the petitioner in which details of charges have been mentioned whereupon the petitioner has filed an objection but he did not find favour with the Sub



Divisional Officer who vide order dated 27.6.2013 passed by the order thereby cancelled the licence of the petitioner. Against that petitioner has approached this Court vide C.W.J.C. No.15720 of 2013. The matter was remanded back to the appellate authority and in the memo of appeal the petitioner has taken a plea that copy of enquiry report was not served upon him and without service of enquiry report the order has been passed which did not find favour with the petitioner, on appeal the Collector passed detailed order on merit, has mentioned that there was no need to serve the copy of the enquiry report and rejected the appeal vide order dated 29.1.2016 passed in Appeal No.43 of 2015.

Learned counsel for the petitioner submits that there is procedural irregularities in decision making process in arriving to the finding of commission of irregularities and passed the order against the petitioner by the Sub Divisional Officer thereby licence of the shop of the petitioner has been cancelled. In appeal it was pointed out non-service of enquiry report but the District Magistrate did not agree with the submission of the petitioner and rejected the appeal.

Learned counsel for the State submits that there is provision for revision. In stead of approaching this Court he should have approached the revisional authority. This Court



would have remanded back the matter to the revisional authority but it will not serve the purpose as there is procedural irregularity in decision making process but this Court while exercising the powers of judicial review, has found that procedure has not been followed properly by the licensing authority as enquiry report basis for initiation of proceeding has not been served but the same has been attached to the counter affidavit is voluminous one was required to be served upon the petitioner, having been not served but has been asked explanation from the petitioner. The Court cannot sit over the judgment as an appellate court but would examine as to whether the basic procedure has been followed, in case of failure to follow, this Court would interfere with the action taken by the authority. As copy of the enquiry report was not served upon the petitioner and as such he could not give effective reply to the show cause.

In such view of the matter, the order of the Sub Divisional Officer dated 27.6.2013 and order of the appellate authority passed in Appeal No.43 of 2015 dated 29.1.2016 are hereby set aside and matter is remanded back to the authority concerned. Already enquiry report is attached to the counter affidavit it will be deemed to be proper service upon the petitioner, the petitioner, if so advised, may file supplementary show cause within three



weeks from today and thereafter the Sub Divisional Officer after giving due notice and hearing to the petitioner will take decision within four weeks thereafter in accordance with law.

Original record of this case is being returned back to the learned counsel for the State.

With the aforesaid observation and direction this writ petition is disposed of.

(Shivaji Pandey, J)

Vinay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.5.2017
Transmission Date	NA

