

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6958 of 2014

=====

Jinish Lal Mahto @ Ram Jinis Mahto, resident of village and Panchayat - Sahiyara, P.S. Bathnaha, District - Sitamarhi.

.... Petitioner/s

Versus

1. The State Of Bihar through The Chief Secretary, Government Of Bihar, Patna.
2. The Secretary, Department of Food and Civil Supplies, Government Of Bihar, Patna.
3. The District Magistrate, Sitamarhi, District - Sitamarhi.
4. The District Supply Officer, Sitamarhi, District - Sitamarhi.
5. The Sub-Divisional Officer, Sitamarhi Sadar, District - Sitamarhi.
6. The Block Supply Officer, Bathnaha, District - Sitamarhi.
7. The Block Development Officer, Runnisaipur, District - Sitamarhi.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. N.K. Agrawal, Sr. Advocate
Mr. Pushpendra Kumar Singh, Advocate
For the Respondent/s : AC to G.A. 10

=====

CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

2 18-04-2017

Heard learned Senior Counsel for the petitioner

and learned counsel appearing on behalf of the State.

The petitioner seeks a writ of certiorari for quashing the order dated 08.04.2013 passed by the Sub-Divisional Officer, Sitamarhi Sadar, Sitamarhi (respondent no. 5) contained in letter no. 90, whereby and whereunder the said authority has cancelled the license of the petitioner granted to him under the Public Distribution System.



Learned Senior Counsel for the petitioner submits that the authority has not followed the practice and procedure envisaged under the Essential Commodities Act for cancellation of the licence granted to the petitioner inasmuch as though the notice has been served on him and an enquiry was conducted, no enquiry report was ever furnished so as to enable the petitioner to answer the same. Learned Senior counsel for the petitioner has relied upon a decision of the Apex Court reported in AIR 16 Patna 148 in which this Court has taken the categorical view that under the Essential Commodities Act, the PDS license cannot be cancelled without supplying enquiry report to the licensee and without giving liberty to him to explain his case. It is further submitted that the petitioner is willing to file his show cause after a copy of the enquiry report is furnished to him and after affording an opportunity of hearing to petitioner, the authority may then pass a reasoned order in accordance with law.

Learned counsel appearing on behalf of the State submits that the present application is not maintainable in view of the fact that there is a statutory provision of appeal which has not been availed by the petitioner and the petitioner has chosen to come directly to this Court. It is, thus, contended



that on this ground alone, the petitioner's writ is fit to be dismissed.

This Court after noticing the clear discrepancy in the action of the respondents inasmuch as the Enquiry Report has not been furnished on the petitioner which is also not denied by the respondent is of the considered opinion that the impugned action is not sustainable.

In view of the present facts and circumstances as stated in the writ application and also for the reasons stated above, while setting aside the order dated 08.04.2013 contained in letter no. 90, the matter is remitted back to the Sub-Divisional Officer, Sitamarhi Sadar, Sitamarhi for taking a fresh decision in the matter after affording the petitioner an opportunity to file show cause.

It is made clear that the Licensing Authority shall make available to the petitioner copy of the enquiry report within a period of four weeks of receipt of a copy of this order. The petitioner shall then file his reply to the enquiry report received by him and the authority shall then pass an appropriate order in accordance with law within a period of three months, thereafter.

With the aforesaid observations/directions, the



writ application stands disposed of.

(Anjana Mishra, J)

Jagdish/-

U			
---	--	--	--

