

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10872 of 2014

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Awadhesh Singh Son of Late Ganga Dayal Singh Resident of Village -
Udwant Nagar, P.S. Udwant Nagar, District - Bhojpur

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Food and Civil Supply
Department, Government of Bihar, Patna
2. The District Magistrate, Bhojpur
3. The District Supply Officer, Bhojpur
4. The Sub - Divisional Officer, Sadar Ara, Bhojpur
5. The Block Supply Officer, Udwant Nagar, Bhojpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Tej Pratap Singh
For the State : Mrs. Anuradha Singh, S.C. 21
Mr. Rakesh Prabhat, A.C. to S.C. 21

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

3 11-05-2017 1. Heard learned counsel for the petitioner and learned
counsel appearing on behalf of the State.

2. The petitioner seeks to assail an order dated 29.01.2014
for quashing the appellate order of the District Magistrate,
Bhojpur who has upheld the cancellation order passed by the Sub-
divisional Officer bearing Memo No. 1313 dated 05.12.2011 by
which the licence of the petitioner of P.D.S. (Public Distribution
System) has been cancelled under the Public Distribution
(Control) Amendment Order, 2011.

3. The petitioner further seeks a mandamus directing the
respondents to restore the licence of the petitioner for running the
Public Distribution System at Udwant Nagar, Bhojpur.



4. Learned counsel appearing on behalf of the petitioner had a PDS licence which had been operational since 1973 without there being any complaint from any quarter. It is submitted that on 15.11.2011, a surprise inspection was conducted at the P.D.S. shop of the petitioner by the Marketing Officer, Ara Town, along with the District Supply Officer, Bhojpur who after noticing irregularities, issued a show cause notice to the petitioner on 03.12.2011. However, on 05.12.2011, the Sub-divisional Officer rejected the show cause of the petitioner and cancelled the P.D.S. licence. The appeal before the District Magistrate bearing Appeal Case No. 16 of 2012 also met with the same fate. Aggrieved by the order dated 14.12.2012, passed by the Appellate Authority which had dismissed his appeal on the ground of limitation, the petitioner preferred C.W.J.C. No. 6088 of 2013 which was allowed to the extent that the order passed on 14.12.2012 was set aside and the matter was remanded back to the remained before the District Magistrate and the petitioner has met with the same fate as the same was dismissed on 29.01.2014 by means of a cryptic order. It is under such circumstances that the petitioner has once again approached this Court for redressal of his grievances being set aside the order of P.D.S. licence as also the order passed by this appellate authority.



5. Learned counsel for the petitioner submits that the impugned order contained in Annexure-10 stands vitiated on the ground that at no point of time copies of the complaints filed against him was ever supplied to petitioner. It is further submitted that the authorities have acted in a mechanical manner as though the petitioner had left the shop on the specified date of enquiry, on receiving information of such enquiry appeared on the same date before the Enquiry Officer so as to prove his bonafides. On the very date of Enquiry, the petitioner also produced the relevant documents available with him in his shop with regard to the supplies made to the respective recipients. Nevertheless, the authorities have ignored the petitioner's contention that he had been prevented by sufficient cause to leave the shop on the particular date though earlier there was no complaint with regard to Public Distributions made by him. In support of his contentions he also produced the Register indicating that the petitioner had in fact opened the shop earlier in the day and made supplies to the various recipients showing distribution of kerosene oil as well as other food grains.

6. It is submitted by him that such a fact stands substantiated by Respondents themselves in their notes that the petitioner had co-operated in the enquiry. It was further averred



that the respondents, without taking into consideration the materials placed before him, have rejected his show cause. The names of the persons who had complained against the petitioners have been brought on record but during the entire course of enquiry neither were they produced nor was their statement so recorded so as to substantiate the charges levelled against the petitioner by such beneficiaries who were aggrieved by the unfair action of the petitioner. He thus, submits that any report which was submitted by the Inspecting Authority, being contrary to the principle of natural justice as has been indicated above, was vitiated. It was further submitted that he was unable to answer to the show cause in its entirety, particularly because the Enquiry Report was never made available to him. He thus submits that the very action of cancellation stands vitiated and is fit to be set aside. The Appellate Authority has also not considered the statements made by the petitioner in his show cause and has proceeded in most mechanical and arbitrary manner in rejecting his appeal by means of a cryptic order which lacks sound rationale.

7. Learned counsel appearing on behalf of the State has vehemently urged and controverted the submissions advanced by the learned counsel appearing on behalf of the petitioner. He has submitted that the on the spot enquiry which was conducted in the



presence of the petitioner, the officers found several irregularities which were reported to the Sub-divisional Magistrate and it is upon following the due process of law i.e., after issuance of notice in the prescribed manner that the action has been taken against the petitioner. He has further submitted that the petitioner's answer to the show cause was found to be wholly inadequate and for that reason alone, the Sub-divisional Officer has rejected the show cause of the petitioner and proceeded to pass the cancellation order which is wholly in accordance with law.

8. Learned counsel for the State however submits that the contention of the petitioner that the enquiry was conducted behind his back, is also misconceived. He further submits that the petitioner has committed irregularities and malpractices which were found substantiated during the inspection. As such, the inspection report was sent to the S.D.O., Sadar for taking action. It was thus submitted by respondent-State that in view of the irregularities found to have been conducted at the time of inspection, the order impugned stands fully substantiated and cannot be assailed for that count. He further submits that on remand from this Court, the petitioner's appeal was re-considered and after due consideration of all facts and circumstances and the explanation offered by the petitioner, the order of the appellate



authority rejecting the case of the appellant has been passed.

9. Having considered the rival submissions of the parties and taking into consideration the fact that the cancellation of the P.D.S. shop of the petitioner deprives him of his valuable rights to livelihood and also taking note of the fact that though the enquiry was conducted in his presence, the copy of the enquiry report was not furnished to him at the time of issuance of show cause, this Court is of the considered opinion that the petitioner being unaware of the details of the allegations against him as well was deprived of the opportunity to take appropriate evidence from such allegationists whose names have been taken in such enquiry report. It is not denied by the respondents in the counter affidavit that such enquiry report was ever served on the petitioner. The notice does not indicate the presence of any enquiry report which would be containing the names of the persons who had made allegations against the petitioners.

10. As such, the impugned notice to the petitioner stands vitiated and since such issues have not been considered by the licencing authority as also the licencing authority which passed impugned order of cancellation, the case of the petitioner deserves to set aside on its own merits.

11. For the reasons stated above and in view of the fact



that this Court has in a catena of decisions held that the issuance of enquiry report being a pre-requisite for issuance of the show cause notice so as to effectively subserve the principle of natural justice. In the instant case, this Court, having noticed this glaring discrepancy in the notice which was served prior to cancellation of licence of the petitioner is of the considered opinion that the same stands vitiated and is fit to be set aside. Accordingly, the order of cancellation dated 05.12.2011 contained in Memo No. 1313 is quashed. As a natural corollary to the order under appeal as contained in Annexure-10 also stands vitiated and is accordingly set aside.

12. The licence of the petitioner stands restored.

13. In the result, the writ petition is allowed.

14. However, there shall be no order as to costs.

(Anjana Mishra, J)

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