

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9841 of 2014

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Primary Agriculture Credit Co-operative Society, Dharni Patti East through its Chairman cum Operator fair Price Shop Upendra Prasad Singh, S/o Alakhdeo Prasad Singh, Resident of Village-Rasalpur, P.O.-Rasalpur, P.S.-Patori, District Samastipur

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Food and Consumer Protection, Govt. of Bihar, Patna.
2. The District Magistrate, Samastipur, District- Samastipur.
3. The Sub-divisional Officer, Sub-Division, Patori, District Samastipur.
4. The Block Supply Officer, Block Mohanpur, District Samastipur.
5. The Bihar State Food and Civil Supply Corporation through its Managing Director, Sone Bhawan, Patna.

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Dhananjay Kumar, Advocate
For the State : Mr. S.S.P. Yadav, S.C.-14
For the BSFC : Mr. Shailendra Kumar Singh, Advocate

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

Date: 18-05-2017

Heard learned counsel for the petitioner and the learned counsel appearing on behalf of the State.

2. The petitioner seeks to challenge the order contained in Memo No.904 dated 17.07.2013 (Annexure 6), by which the Sub-Divisional Officer, Patori has cancelled the licence of the petitioner for Public Distribution System (PDS) shop, bearing Licence No.28/2011, ignoring the guidelines/instructions issued by the Food and Consumer Protection Department, Government of Bihar, vide Letter No. Pra-06-Vividh-03/2010 (Khand),



5817/Khadya dated 12.09.2012. The petitioner further seeks to assail the order dated 10.12.2013 (Annexure 8) passed in PDS Licence Cancellation Appeal No.81/2013 by the District Magistrate-Cum-Collector, Samastipur, dismissing his appeal on erroneous considerations.

3. Learned counsel for the petitioner submits that on 07.10.2011, the petitioner was granted licence to run the PDS shop. Guidelines for running the shop have been issued by the Department of Food and Civil Supplies, Government of Bihar, vide Letter dated 12.09.2012, indicating the manner in which the proposed action could be taken against the PDS dealer for not depositing the cost of PDS food grains in time. The petitioner was served with a show cause notice dated 19.06.2013 and in response thereto, he filed his reply on 26.06.2013. However, ignoring the show cause reply filed by the petitioner, the S.D.O., Patori, vide his Memo No.904 dated 17.07.2013 (Annexure 6), cancelled the licence of the petitioner and thereafter the appeal filed before the District Magistrate-Cum-Collector, Samastipur against the aforementioned order was also dismissed, vide order dated 10.12.2013 (Annexure 8).

4. The petitioner is thus before this Court seeking for redressal of his grievances and prays for setting aside the



impugned order of cancellation and also for restoring the licence granted to him and also allowing him to run the business of PDS.

5. Learned counsel for the petitioner submits that the PDS shop licence of the petitioner could not be cancelled without considering the show cause filed by him and such rejection order is wholly illegal and unjustified. He further submits that the respondents have not taken into consideration Letter No.Pra-06-Vividh-03/2010 (Khand), 5817/Khadya dated 12.09.2012 before inflicting the cancellation order, which has been passed by way of punishment against the petitioner. Learned counsel for the petitioner submits that prior to the cancellation order being issued against the petitioner, the respondents failed to supply the documents, which were being used against the petitioner. He submits that though the petitioner's valuable right to livelihood was defeated by the respondents by cancelling the licence of the PDS shop after assigning frivolous reasons, such order is violative of the principles of natural justice and thus stands vitiated.

6. Learned counsel for the petitioner further submits that a similar notice had been issued to the petitioner earlier during the period of his illness, which was duly answered by the petitioner. After due consideration, on becoming well enough to run his licence/PDS shop, the petitioner was permitted to deposit



money for lifting the food grains and thereafter he continued to run the PDS shop. However, respondent No.3, once again, issued show cause notice to the petitioner framing charges against him and it was alleged that vide Letter No.57 dated 13.06.2013 issued by the Block Supply Officer, the petitioner was being, once again, proceeded against for the cancellation of licence. Learned counsel for the petitioner thus submits that the report of the Block Supply Officer has never been served on him and using such materials, which were wholly behind his back and of which the petitioner was totally unaware, the cancellation order has been passed against him.

7. Learned counsel for the petitioner, however, submits that the report of the Block Supply Officer has never been brought on the record or served on the petitioner and the same is not available even as on date on the records of this case. Thus, the respondents cannot use the same to the detriment of the petitioner, especially to cancel his licence. He thus submits that the orders impugned are bad in law and fit to be set aside.

8. Having heard learned counsel for the petitioner and the learned counsel appearing on behalf of the State, this Court is of the considered opinion that the entire proceedings conducted against the petitioner are wholly illegal and are in violation of the



principles of natural justice. The respondents have failed to supply the petitioner a copy of the enquiry report, which was used to deprive him of his livelihood. It is not clear from the record of the case that the earlier contention of the State that the petitioner had not been running a PDS shop in accordance with the licence granted to him could be presumed to have been accepted as the petitioner had succeeded in establishing before the authorities that he had been prevented by sufficient cause from depositing the money, and the petitioner's licence was also suspended by the authority to attach his shop with other PDS dealer in accordance with rule so that the consumers/beneficiaries of *Antyodaya* Scheme may not suffer. It was under such circumstances that the earlier proceedings against the petitioner had been dropped and thereafter for same set of allegations, no second proceedings ought to have been initiated against him.

9. As such, this Court fails to appreciate the action of the respondents and the impugned cancellation order, as contained in Memo No.904 dated 17.07.2013 (Annexure 6), as well as the appellate order dated 10.12.2013 (Annexure 8) being wholly against the principles of natural justice is set aside. In view of the impugned orders having been set aside, it is directed that the licence of the petitioner be restored.



10. With the aforementioned observations and directions, the writ application is allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

(Anjana Mishra, J)

PNM

AFR/NAFR	NAFR
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