

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12124 of 2016

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Tulsi Prasad Yadav, Son of Late Sarabjeet Prasad Yadav, Resident of village and Post - Kerwar, P.S. Katoria, District Banka

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection Department, Old Secretariat, Patna
2. The Commissioner, Bhagalpur Division, Bhagalpur
3. The Collector, Banka, District - Banka
4. The Licensing Authority -cum-Sub-Divisional Officer, Banka, District Banka

.... Respondents

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Appearance :

For the Petitioner : Mr. Rajeev Kumar Labh, Advocate

For the Respondents : Mr. Alok Ranjan AC to GA

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 14-12-2017

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

2. The writ petition has been filed for the following reliefs:

“(A) Certiorari for quashing and setting aside the order passed by the Licensing Authority-cum-Sub-Divisional Officer, Banka vide Memo No. 223 dated 15.03.2011 contained in Annexure-1 whereby and whereunder licence of the petitioner’s Fair Price Shop bearing No. 01/2004 has been cancelled as well as quashing and setting aside the order dated 26.04.2013 passed by the learned Collector, Banka in Supply Appeal Case No. 04/2011-12 contained in Annexure-4 whereby and whereunder appeal filed by the petitioner against the cancellation order has been has been rejected; and quashing and setting aside the order dated 14.05.2016 passed by the learned Commissioner, Bhagalpur Division, Bhagalpur in Miscellaneous (Supply) Revision Appeal Case No. 57 of 2015-16 contained in Annexure-5 whereby and whereunder revision filed by the



petitioner against the appellate order has been rejected;
(B) A mandamus commanding the Respondents to restore the petitioner's licence as before and to make allotment for the petitioner's shop.
(iii) Any other relief or reliefs for which petitioner may be found entitled in the fact and circumstances of the present case may be granted to him".

3. Learned counsel for the petitioner makes a short submission to assail the impugned order on the ground that a copy of the enquiry report was not made available to the petitioner and she was never confronted with the same with an opportunity of being heard or adducing evidence in that regard. A specific stand has been taken in paragraph 15 of the writ petition that the impugned order of cancellation of licence has been passed without providing a copy of the enquiry report to the petitioner, though the same had been relied upon in the impugned order.

4. Learned counsel for the respondents appears and has been heard. The stand of the petitioner with regard to non-supply of enquiry report has not been controverted, as no counter affidavit has been filed till date.

5. In the above view of the matter, this Court is satisfied that non-supply of the enquiry report to the petitioner has resulted in violation of natural justice and thus the decision making process stands vitiated. The impugned order passed by the Sub-Divisional Officer, Banka vide Memo No. 223 dated 15.03.2011 (Annexure-1); the appellate order dated 26.04.2013 passed by the learned Collector,



Banka in Supply Appeal Case No. 04/2011-12 (Annexure-4) as well as the order dated 14.05.2016 passed by the learned Commissioner, Bhagalpur Division, Bhagalpur in Miscellaneous (Supply) Revision Appeal Case No. 57 of 2015-16 (Annexure-5) are hereby quashed and the matter remanded to the Sub-Divisional Officer, Banka for taking decision afresh in the matter after supplying a copy of the enquiry report to the petitioner and granting an opportunity of hearing in accordance with law. Supplies to the petitioner shall be restored without delay until fresh orders are passed by the respondent no. 4.

6. It is made clear that in case the stand of the petitioner denying receipt of the enquiry report prior to order of cancellation being passed is found to be incorrect, the respondents shall be at liberty to approach this Court for recall of this judgment.

7. The writ petition stands allowed as above.

(Vikash Jain, J)

B.T/Chandran

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	19.12.2017
Transmission Date	N.A.

