

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16672 of 2014

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Akhilesh Kumar Choudhary son of Siya Saran Choudhary resident of
Village - Manipur Panchayat Angauri, P.S. Ekangasarai, District - Nalanda
..... Petitioner/s

Versus

1. The State of Bihar through Secretary, Food and Civil Supply Department,
Bihar, Patna
2. The Collector, Nalanda
3. The S.D.O., Hilsa, Nalanda

... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vijay Anand, Adv.
Mrs. Sarita Kumari, Adv.

For the Respondent/s : Mr. Ajay, Adv.
Mr. Rakesh Kumar Ranjan, Adv.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

2 17-08-2017 Heard learned counsel for the petitioner and

learned counsel for the State.

The petitioner seeks to assail the order dated
26.07.2014 passed by the Collector, Nalanda in Supply Appeal
No. 3 of 2012 whereby and whereunder by means of the order
passed by the Licensing Authority, namely, S.D.O., Hilsa
Nalanda dated 04.11.2011 (Annexure-3) the petitioner's licence
bearing Licence No. 1 of 2010 which has been granted to him
for running the PDS shop, has been cancelled.

At the very outset, learned counsel for the State
makes a preliminary objection that the present writ application is



not maintainable as the petitioner has approached this Court without filing his grievance under the statutory provisions before the Revisional Authority, namely, the Commissioner. He submits that in view of the provisions of statutory remedy available under the provisions of the Act, the petitioner's writ application appears to be misconceived and is, thus, fit to be dismissed.

Learned counsel for the petitioner has answered the same objection by stating that the very notice by which the impugned orders have been generated, has been issued in clear violation of the statutory rules i.e. Section 7 (2) of the Bihar PDS Control Order, 2007. He, thus, submits that since the very notice, as contained in Annexure- 1, is illegal, the same warrants interference by this Court. His further contention with regard to the merits of the case, is that, apart from the notice being wholly illegal, the impugned orders stand vitiated on account of the fact that the petitioner's contentions have not been considered and merely on the basis of presumption, the impugned orders have been passed. He, thus, submits that it is a clear case of non-application of mind by the concerned authority and, as such, the order cannot be sustained by any stretch of imagination.

Learned counsel for the petitioner further submits



that the name of the allegationist was given in the said notice, the petitioner was never afforded a reasonable opportunity to present his case and/or examine/cross-examine the witnesses and the allegations were never brought before the appellate authority at the time of passing of the impugned orders. On this ground also, the impugned orders stand vitiated. So far as the non-supply of the coupons are concerned, learned counsel for the petitioner submits that after disbursing the items the said coupons are deposited with the Block Supply Officer and, if at all, it was necessary for determining the case of the petitioner, the SDO and also the Collector ought to have called for the same from the State functionaries and not demanded the same from the petitioner, who had already deposited it with the Block Supply Officer.

Till date, there is no counter affidavit filed by the respondents in this regard and though the writ application was filed in the year 2014 ie. 19.09.2014, despite a lapse of almost 3 years, there is no affidavit controverting the averments made in the writ application.

Under such facts and circumstances and after hearing learned counsel for the petitioner and learned counsel for the State, this Court finds and holds that from the very beginning



of the proceedings which led to the cancellation of the licence of the petitioner, the authorities concerned have proceeded in an altogether illegal manner inasmuch as the statutory rule being Rule 7 (2) of the order has not been followed. A bare perusal of the notice reveals that there is only a direction to the petitioner to show cause. There is no proposal for either suspension or cancellation of the licence of the petitioner and, therefore, whatever emanated, thereafter, must be held to be illegal. This Court has also considered the contents of the subsequent appeal filed by the petitioner before the Collector which clearly shows that he had raised all his objections and had substantially countered the allegations made therein. However, the authorities have failed to consider his appeal and have passed an altogether erratic order which clearly reveals non-application of mind by not considering the grounds raised in the said appeal.

Accordingly, the impugned notice vide Memo No. 1033 dated 15.10.2011 (Annexure-1), Memo No. 1096 dated 04.11.2011 (Annexure-3) and the impugned order dated 26.07.2014 (Annexure -4) are quashed. The licence of the petitioner is directed to be restored.

However, it will be open for the petitioner to approach the concerned authority for resumption of supply of his



PDS shop in accordance with law.

With the aforementioned direction, the writ application stands allowed.

(Anjana Mishra, J)

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