

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20298 of 2014

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Kishori Choudhary, son of Late Durga Choudhary, resident of
Mohiuddinagar, P.S.- Mohiuddinagar, Distt.- Samastipur

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Food & Consumer Protection
Department, Bihar, Patna
2. The Sub-Divisional Officer, Patori, Samastipur
3. The Block Supply Officer, Mohiuddinagar, Distt.- Samastipur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mrs. Shilpi Keshri, Advocate
Mr. Ganesh Sharma

For the Respondent/s : Mr. Ravi Kumar
Mr. Ankit Katriar
AC to AAG -13

For the BSFC : Mr. Shailendra Kumar Singh, Advocate

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

2 17-04-2017 Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel appearing on behalf of
the BSFC.

The petitioner seeks a writ of certiorari for
quashing the order dated 05.10.2014 contained in Memo No. 305
by which the S.D.O., Patorhi, Samastipur has cancelled the
licence of the petitioner granted to him on 20.02.2007 for
carrying on his business under the PDS system on the basis of
certain allegation.

It is submitted by learned counsel for the petitioner
that though the petitioner was running his shop for which a
licence had been granted to him on 20.02.2007 and had an



unblemished past, a show cause notice was issued to him on 17.09.2014 on certain allegations. By the said show cause notice, the petitioner was directed to file his reply within two days from the date of receipt, failing which the licence would be cancelled. The petitioner filed his show cause on 24.09.2014 stating therein that he has not violated the terms and conditions of the licence. Further, it was submitted by the petitioner that he has been making regular supply to the beneficiaries at the price fixed and, as such, the proceedings initiated against him may be dropped. It is further submitted by the petitioner that the S.D.O. Samastipur entrusted the Circle Officer to make an enquiry. The Circle Officer accordingly, submitted an Inspection Report vide his report dated 29.09.2014 but all of a sudden on 05.10.2014 itself, without considering the show cause notice filed by the petitioner and relying merely on the basis of inspection report of the Circle Officer, the impugned order has been passed. It is further submitted by learned counsel for the petitioner that the impugned order stands vitiated on account of the fact that the enquiry report of the Circle Officer was never served on him and, as such, the order suffers from violation of the Principles of Natural Justice.

Learned counsel for the petitioner further submits



that though this petitioner has come to this Court directly in view of the fact that the statutory provisions have been violated and no Enquiry Report has been served on him before passing the impugned order, the same may be set aside and the petitioner may be issued fresh license.

Learned counsel appearing on behalf of the State also filed a show cause stating that the present application is not maintainable in view of the fact that there is statutory provision of appeal which has not been availed by the petitioner and the petitioner has chosen to come directly to this Court.

In response to the said submissions advanced by the learned counsel for the State, the petitioner has relied upon a decision of the Apex Court reported in AIR 2016 PATNA 148 in which this Court has taken the categorical view that under the Essential Commodities Act, the PDS licence cannot be cancelled without supplying enquiry report to the licensee and without giving liberty to him to explain his case.

Learned counsel for the petitioner has drawn my attention to paragraph -6 of the said judgement which is quoted hereunder:-

“It is further submitted that from the show-cause notice, a copy which has been appended as Annexure-2, it would appear



that the charges framed thereunder were based upon the inquiry conducted by the District Supply Officer, Gaya on 23.09.2011. However, a copy of the enquiry report was never supplied to the petitioner so that a proper reply to the charges could have been given by him. Learned counsel has placed reliance upon an unreported decision in this regard dated 02.04.2013 passed in C.W.J.C. No. 9418 of 2011 (Sushil Kumar Bhandari v. The State of Bihar) holding that non-supply of inquiry report alongwith show-cause notice which forms basis of passing an order of cancellation of licence would be a fatal lacuna as, in the opinion of this Court, only indicating charges for the notice would not be sufficient for filing the reply inasmuch as the nature and extent of materials collected during the course of inquiry would have to be known for filing a relevant purpose.”

Learned counsel for the petitioner submits that had the petitioner been given the liberty to explain his action, then the authority could have passed an order which would not have prejudiced the petitioner. Counsel for the State fairly submits that there is nothing on record indicating that the said report was served on the petitioner.



In view of the present facts and circumstances as stated in the writ application and also for the reasons as stated above, while setting aside the order dated 05.10.2014 contained in Memo No. 305, the matter is remitted back to the Licensing Authority 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)

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