

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14815 of 2014

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Bhagwat Ram, S/o- Dillo Ram, resident of village, Pinjour Panchayat
Pandui, Police station – Parasbigha, District Jehanabad.

.... Petitioner/s

Versus

1. The State of Bihar
2. The State of Bihar through the District Magistrate/Collector, Jehanabad
3. The Sub divisional Officer-cum-Licensing Authority, Public Distribution system, Jehanabad.
4. The District Supply Officer, Jehanabad.
5. The Assistant District Supply Officer, Jehanabad.
6. The Block Supply Officer, Jehanabad.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. K.N. Choubey, Sr. Advocate
Mr. Ashok Kumar Garg, Advocate
Mr. Dineshwar Pandey, Advocate
For the Respondent/s : Mr. Priyadarshi, AC to AAG -15

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

2 29-06-2017 Heard learned Senior Counsel for the petitioner and

learned counsel appearing on behalf of the State.

The petitioner seeks to assail the order dated 20.02.2014 passed by the District Magistrate-cum-Collector, Jehanabad (the Appellate Authority) whereby and whereunder the District Magistrate has affirmed the Memo No. 1110 dated 07.10.2011 passed by the Sub Divisional Officer, Jehanabad (Annexure-4) by which the Licence No. 24 of 2007 of the petitioner issued under the Public Distribution System has been cancelled.

The earlier order of the District Magistrate had



travelled to this Court in C.W.J.C. No. 21345 of 2011 (Annexure-5) in which, this Court had relegated the matter to the Appellate Authority for deciding the appeal with an observation that the petitioner would be at liberty to raise all the points before the Appellate Authority.

The case of the petitioner briefly stated is that he was a PDS dealer bearing License No. 24 of 2007 in the village Pinjour under the District of Jehanabad. In course of inspection dated 23.07.2011 conducted by the Licensing Authority, certain irregularities were found; one of which included non-supply of Kerosene Oil to 100 consumers from June 2008 to December, 2008 and the other being that 13 persons, who were entitled to Antodaya Scheme, were not supplied foodgrains. The foodgrains were alleged to have been sold in the black market. On the basis of the report submitted by the Licensing Authority on 13.03.2011, petitioner was issued a show cause notice by the Sub Divisional Officer-cum-Licensing Authority, Jehanabad vide letter no. 796 dated 13.08.2011. The reply of the petitioner did not yield success though he had categorically submitted that the allegations are wholly false and mischievous and the petitioner had never lifted kerosene oil as these 100 consumers had been transferred to another PDS shop. The Licensing Authority, however, without



considering the reply of the petitioner cancelled the licence of the petitioner vide Memo No. 1110 dated 07.10.2011.

Being aggrieved by the aforementioned order, the petitioner had come to this Court and in view of the fact that there was a statutory appeal, the matter was sent back with liberty to the petitioner to prefer an appeal which was to be considered by the Appellate Authority in accordance with law. The petitioner, then preferred an Appeal bearing Appeal No. 18 of 2013 before the District Magistrate-cum-Collector, Jehanabad. The Appellate Authority has affirmed the order and set aside the case of the petitioner without appreciating the materials available on record and without affording sufficient opportunity to meet the allegations as levelled against him.

Learned Senior Counsel appearing on behalf of the petitioner submits that the Appellate Authority failed to consider that the consumers, who had made allegations against the petitioner, were not the consumers of the petitioner as their names had already been deleted; rather they were consumers of another PDS dealer, namely, Ram Jatan Paswan. It is further submitted that though the allegation was made, none of the complainants appeared before the District Magistrate so as to afford the petitioner adequate opportunity of examining/cross-examining



their evidence and the finding which has been arrived at by the learned District Magistrate that the petitioner had been drawing kerosene oil is also based on no material as there is nothing on record as to what quantity of kerosene oil was previously lifted by the petitioner at the time when the 100 consumers were availing the supply in the PDS shop of the present petitioner. It thus, appears that the District Magistrate has not gone into the details of the case of the petitioner and without affording him an opportunity has passed the impugned order.

Learned Senior Counsel appearing on behalf of the petitioner has also drawn my attention to the order dated 15.04.2011 passed in CWJC No. 7260 of 2006 and also the order dated 25.07.2011 passed in CWJC No. 10483 of 2005. In the order dated 15.04.2011 passed in CWJC No. 7260 of 2006, this Court after hearing the parties has held that any order passed without affording the petitioner an opportunity of cross-examining those who have alleged against the petitioner could not be sustained. Paragraph -4 of the said order read as under:-

“From perusal of the impugned order dated 25.05.2006, Annexure-3, it does not appear that any of the consumers, who alleged against the petitioner, was ever produced during the enquiry with liberty to the petitioner to cross-examine the



said consumer.”

It also does not appear from the records of the case and the impugned order passed by the Sub-Divisional Officer, Jehanabad as to whether the allegationist, who had come before the Human Rights Commission had also appeared before him to justify the allegations. There is also no clear cut findings as to whether the petitioner was afforded sufficient opportunity to examine the said allegationists and also that whether these allegationists had infact been transferred to another PDS dealer after deleting the names of the shop of the present petitioner.

Having considered the entire facts and circumstances of the case and after perusing the impugned order passed by the Licensing Authority as well as Appellate Authority, it appears that the petitioner's order of cancellation of licence is based on no materials and in view of the facts that two orders have been passed without affording adequate opportunity to the petitioner, the same cannot be sustained in the eye of law. This Court further is of the considered opinion that such order have not been passed without there being any finding regarding the actual availability being made in favour of the petitioner with regard to the supply of kerosene oil. The orders have been passed apparently on the basis of mere presumption which is wholly illegal and arbitrary and are



fit to be set aside.

In the result, the Memo No. 1110 dated 07.10.2011 and the order dated 20.02.2014 as contained in Annexures – 4 & 6 are set aside. The PDS license of the petitioner is also directed to be restored.

With the aforesaid observations, the writ application stands disposed of. No costs.

(Anjana Mishra, J)

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