

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8037 of 2014

=====

Muna Kumar s/o Late Krishna Kumar Singh, Resident of Village-
Chilmikhurd, P.S.- Aamas, Distt.- Gaya

.... Petitioner/s

Versus

1. The State of Bihar, through the Chief Secretary, Bihar, Patna
2. The District Magistrate, Gaya
3. The District Supply Officer, Gaya
4. The Sub-Divisional Officer, Sherghati, Distt. Gaya
5. The Block Supply Officer, Aamas, P.S.- Sherghati, Distt. Gaya

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Sudama Singh
Mr. Rajni Kant Singh
For the State : Mr. Indradeo Prasad, S.C. 27

=====

CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

2 11-05-2017 Heard learned counsel for the petitioner and learned
counsel appearing on behalf of the State.

2. The petitioner seeks cancellation of order dated
17.08.2013 passed by the Sub-divisional Officer, Sherghati, Gaya
whereby and whereunder the P.D.S. Licence bearing No. 36 of
2012 has been cancelled.

3. Learned counsel for the petitioner submits that a show
cause notice was served on the petitioner on the 03.06.2013 which
contained names of the allegationsits who had complained but did
not contain the petition filed against the petitioner. Further, the
impugned order also was passed without issuance of Enquiry
Report which followed the complaint. It is submitted that the
enquiry report has not been furnished to the petitioner and he
could not answer the show cause notice as was expected. He



further submits that the licence of the petitioner has been cancelled under the order of Licensing Authority cum Sub-divisional Magistrate vide order dated 17.08.2013, which is wholly against the principle of natural justice. It is submitted that he was not offered a reasonable opportunity of showing cause to the allegations of the parties as was being placed against him by the officers concerned who had submitted the report against him.

4. Learned counsel for the petitioner has submitted that the impugned orders stands vitiated not only because show cause notice, was wanting in the enquiry report but even in the impugned order, the Sub-divisional Officer has failed to consider that the petitioner was prevented by sufficient cause as he has sustained a fracture of his leg. It is submitted that such an action by the concerned authorities was wholly violative of principle of natural justice and on that count also the impugned order stood vitiated and was fit to be set aside.

5. Learned counsel appearing on behalf of the State has made a preliminary objection stating that the present writ filed by the petitioner is not maintainable under Article 226 of the Constitution of India as he has a remedy by way of statutory appeal before the District Magistrate, Gaya. He submits that the petitioner did not avail the remedy of statutory appeal, but instead he has chosen to knock the door of this Court under



extraordinary jurisdiction and, therefore, the application is fit to be set aside on that ground alone.

6. Having heard learned counsel for the petitioner and learned counsel appearing on behalf of the State, it appears that the impugned order suffers for the reasons that a copy of the enquiry report was not furnished to the petitioner at the time of filing of the show cause. It is well settled in a catena of decisions that the provision for issuance of notice to the dealer is not an empty formality. Rather it should be done in a manner beneficial to the licensee as the same is issued so as to enable him to earn his livelihood which is likely to be infringed. It is also evident from the pleadings of the parties, that such a requirement has not been satisfied in the instant case.

7. In view of such facts and circumstances, the impugned notice as contained in Annexure-2 dated 03.06.2013 as well as order as contained in Annexure 2/1 dated 17.08.2013 are set aside.

8. The writ application is allowed.

9. The licence of the petitioner stands restored.

10. However, it will not preclude the licensing authority to proceed afresh in accordance with law.

(Anjana Mishra, J)

Saif/-

U			
---	--	--	--

