IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18261 of 2014

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1. Dudh Nath Rai son of Raj Ballabh Rai resident of village - Dumariya Police Station - Mohammadpur, District - Gopalganj

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Gopalganj
3. The Sub - Divisional officer, Gopalganj
4. The Block Supply officer, Sidhwaliya, District - Gopalganj

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Rakesh Ranjan
For the Respondent/s : Mr. Mithilesh Kumar Pathak

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

3 17-08-2017 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner is aggrieved by an order dated 18.12.2009 passed in Appeal Case No. 157 of 2008 whereby and whereunder the petitioner's appeal against the Memo No. 3310 dated 24.09.2008 (Annexure-3 to the writ application) has been dismissed.

Learned counsel for the petitioner submits that, the petitioner, who was having PDS shop with Licence No. 24 of 2007 in Gram Panchayat Raj Dumaria, Block – Shidwaliya, District – Gopalganj and was conducting his business without any complaint from any quarter was served with the copy of the

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order dated 28.08.2008 by which the petitioner's PDS dealership was suspended without giving any prior notice to him, on the basis of an Enquiry report submitted to the SDO, Gopalganj. The said Enquiry report was never served on the petitioner before issuing the order of suspension, nor he was ever made to participate in the enquiry, which was conducted solely behind his back. The petitioner also seeks to quash this order.

Close on the heels of the order referred to above, the petitioner though had filed his show cause to the same, but soon thereafter, an order of cancellation was issued by the SDO, Gopalganj, vide his order dated 24.09.2008 as contained in Memo No. 3310.

In view of the provisions of the statutory appeal, the petitioner preferred an appeal bearing Miscellaneous Appeal No. 157 of 2008. The said appeal has also now been dismissed by the Collector, Gopalganj vide order dated 18.12.2009 (Annexure -4) without considering of the statutory provisions of law and the representation filed by the petitioner have also given a total go-by.

Learned counsel for the petitioner submits that the petitioner has been inflicted two punishments which is wholly against the spirit of the control order. Apart from the

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violation of the statutory provision, the authorities have proceeded to act in the most whimsical manner, ignoring the provisions of law and the mandates of the court. Referring to a decision of this Court reported ***in 2013 (2) BLJ in the case of Shiv Chandra Jha Versus Harideo Jha & Ors***., learned counsel for the petitioner submits that this Court has clearly held that two punishments cannot be inflicted on the dealer as it is against the provisions of the licensing order as mentioned in clause 7(2) of the Bihar PDS Control Order, 2007. He further submits that once the authorities is decided to suspend the licence by way of punishment under Clause 7 (2) of the Bihar PDS Control Order, 2007 he cannot proceed further to cancel the licence as the petitioner cannot be punished twice for the same act of misconduct or offence. It, thus, appears that not only the notice was issued to the petitioner against the statutory rule and in clear violation of the Principles of Natural Justice, inasmuch as the Enquiry report was never supplied to him, the petitioner has been saddled with two punishments, which is clearly contrary to the decisions aforementioned.

Learned counsel for the State has also filed a counter affidavit, in which, they have stated that the petitioner was to carry on his business in accordance with the Public

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Distribution System (Control) Order 2001 but he violated the said provisions and on inspection by the Block Supply Officer. Manjha, gross irregularities were detected which led the Block Supply Officer to submit his report vide letter No. 88 dated 19.08.2008. It was on the basis of the said report that the then SDO vide letter no. 2873 dated 28.08.2008 suspended the licence of the petitioner and directed him to file show cause as to why his licence be not cancelled.

In the counter affidavit, there is no mention as to whether the Enquiry report was ever served on the petitioner nor is there any mention about the allegations, which were raised with regard to his shop and also, the name of the allegationist so as to offer the petitioner an adequate opportunity to answer the charges against him. It also appears from the order passed by the State that there is total non-consideration of the show cause filed by the petitioner after issuance of the impugned notice as the SDO has relied wholly upon the inspection report filed by the Block Supply Officer, copy of which was never made available to the present petitioner.

It is thus, also apparent that the principles of audi alterum partum have not been followed in the present case, which vitiates the impugned notice and the order which followed

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thereafter, indicate that the explanation offered by the petitioner have not been considered on the facts and circumstances of the case and also in view of the settled law as stated by the petitioner, I am of the view that the impugned order stands vitiated.

Accordingly, the Memo No. 2872 dated 28.08.2008 (Annexure-1) and the order dated 15.09.2008/19/09/2008 (Annexure-3) are quashed. The license 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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