

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6817 of 2014

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Sharwan Kumar Paswan, son of Late Ram Pravesh Paswan, Resident of Village-
Tilath, P.S.- Agion Bazar, District- Bhojpur

.... Petitioner/s

Versus

1. The State of Bihar
2. The Divisional Commissioner, Patna Division, Patna
3. The District Magistrate, Bhojpur at Ara.
4. The Sub-Divisional Magistrate, Piro, District- Bhojpur
5. The Block Supply Officer, Piro, District- Bhojpur

.... Respondent/s

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Appearance :

For the Petitioner	:	Mr. Brajesh Prasad Gupta, Advocate Mr. Rajnandan Prasad, Advocate
For the S t a t e	:	Mr. N.P. Yadav, S.C.-23 Mr. Sudhir Kumar Singh, A.C. to S.C.-23

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

Date: 12-05-2017

Heard learned counsel for the petitioner and the learned
counsel appearing on behalf of the State.

2. The petitioner is a licensee of a P.D.S. shop, bearing
Licence No.90/2007, in Gram Panchayat Raj Kataria, Block-Piro,
District-Bhojpur since the year 2007. The said licence has been
cancelled by means of an order passed by the Sub-Divisional
Magistrate, Piro, Bhojpur, issued vide Memo No.1894 dated
20.10.2011 (Annexure 3). The petitioner preferred an appeal
against the aforementioned order, bearing Revenue Appeal
No.19/2011-12, which was also dismissed on
04.05.2012/22.05.2012 (Annexure 4). Thereafter, the petitioner



also preferred Essential Commodities Act Revision No.200 of 2013, which met the similar fate on 10.10.2013/15.01.2014 (Annexure 6).

Aggrieved by the aforementioned orders, the petitioner seeks issuance of a writ in the nature of *certiorari* for setting aside the same as being wholly violative of the principles of natural justice and also for having violated the principles of law.

3. Learned counsel for the petitioner submits that on 22.09.2011, the SDO, Piro (Supply Section) issued show cause notice to the petitioner, vide Letter No.1748 dated 22.09.2011 (Annexure 1). The petitioner answered the said show cause notice denying the allegations made in the same, but though the show cause was filed well within time, the respondent-SDM, Piro proceeded to cancel the licence of the petitioner, vide Memo No.1894 dated 20.10.2011 (Annexure 3). The said order was passed ignoring the contentions of the petitioner in the reply to the show cause. Learned counsel for the petitioner contends that the notice did not contain the substance of the allegations nor was the petitioner permitted to examine/cross-examine the allegationists, on the basis of which the impugned notice has been issued to him.

4. The petitioner then filed an appeal, bearing Appeal No.19/2011-12, which was also dismissed on 04.05.2012/22.05.2012. Thereafter, the petitioner moved this



Court, vide CWJC No.3303 of 2013, which was disposed of, vide order dated 05.03.2013 (Annexure 5), with liberty to the petitioner to file revision. Accordingly, he filed a revision application, which also met the same fate. Hence, once again the petitioner has approached this Court through the present writ application.

5. Learned counsel for the petitioner contends that the two impugned orders passed by the cancellation authority as well as the appellate authority were wholly without following the settled principles of law as neither the copy of the enquiry report was supplied to the petitioner nor was he permitted to cross-examine the witnesses. As such, the petitioner knocked the doors of this Court for expeditious relief as the cancellation of licence had caused loss to his business, which was his only source of livelihood.

6. Learned counsel for the State, while referring to the statements made in the counter affidavit, submits that the petitioner was found to be absent on the day of inspection and the shop in question was also found to be closed. On enquiry being made, it was discovered that the petitioner's son was running his shop instead of the petitioner. Furthermore, there was serious allegation against the petitioner by certain complainants, for which no plausible explanation was offered by the petitioner in reply to the show cause notice. Accordingly, the S.D.M. has proceeded to



pass the orders cancelling the licence of the petitioner. It is further submitted that at no point of time did ever the petitioner ask for cross-examination of the witnesses nor did he ever come forward to ask for a copy of the enquiry report. As such, the contentions of the petitioner are wholly untenable and fit to be rejected.

7. Having heard learned counsel for the petitioner and the learned counsel for the State, it appears that the petitioner's licence has been cancelled by the respondents on the ground that the shop in question was found to be closed on the day of inspection. The other reason, which has been assigned for cancellation of the P.D.S. licence of the petitioner, is that there were several allegations against him by the local people. However, there is no answer by the respondents to the contention of the petitioner as to whether the substance of the allegations was given along with the names of the allegationists. Although the names of the allegationists have been mentioned in the notice, the petitioner was not provided the substance of the allegations made in their respective complaints nor was he given an opportunity to cross-examine them. The enquiry report was also not furnished to the petitioner, which is wholly violative of the principles of natural justice.

8. Having considered the submissions advanced, it appears that the cancellation order has been passed on the sole



reason that the petitioner was found absent on the day of inspection, though the statement finds place that certain named persons had filed complaints against him. Copies of such complaints do not appear to have been served on the petitioner. Furthermore, it is also not clear as to whether the enquiry report filed thereafter was served on the petitioner.

9. In a Division Bench decision of this Court in the case of ***Turant Lal Paswan vs. State of Bihar***, reported in ***2012(3) PLJR 583***, this Court in paragraph 4 has held as follows:

“We find that admittedly the petitioner did close the shop on the particular day. Though, the action of keeping the shop closed on one particular day was in breach of the terms and conditions of the licence and may not be justified, was not such grave violation that would entail cancellation of the licence.”

This implies that the petitioner’s licence could not have been cancelled merely because the shop was closed on the day of inspection. It is also apparent from the order (Annexure 5) passed in CWJC No.3303 of 2013 that the revisional authority had been directed to hear the matter afresh on merits and decide the same in accordance with law within the time limit fixed for the purpose after complying with the principles of natural justice.

10. However, a perusal of the said order shows complete non-application of mind and the adequate opportunity for cross-examining the witnesses/complainants has not been



given, which is clearly violative of the principles of natural justice.

11. This Court is of the considered opinion that the impugned orders passed against the petitioner are wholly illegal, arbitrary and violative of the principles of natural justice. The order of the revisional authority dated 10.10.2013/15.01.2014 passed in Essential Commodities Act Revision No.200/2013 (Annexure 6) as also the appellate order dated 04.05.2012/22.05.2012 passed in Revenue Appeal No.19/2011-12 (Annexure 4) and the order of cancellation passed by the S.D.M., Piro, Bhojpur dated 20th October, 2011 (Annexure 3) thus stand vitiated and are set aside. In view of the cancellation order having been set aside, it is directed that the petitioner's licence be restored.

12. In the result, the writ application is allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

(Anjana Mishra, J)

PNM

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.05.2017
Transmission Date	NA

