

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9294 of 2014

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Kusheshwar Paswan, Son of Ram Sewak Paswan, resident of Village- Rotahi, P.S.-
Bela, District- Sitamarhi

.... Petitioner/s

Versus

1. The State of Bihar, through Chief Secretary, Patna
2. The District Magistrate, Sitamarhi
3. The Sub-Divisional Officer, Sitamarhi Sadar, Sitamarhi
4. The Block Supply Officer, Sitamarhi Sadar, Sitamarhi

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Nagendra Kumar, Advocate
Mr. Parwej Khan, Advocate
For the State : Mr. Sunil Kumar, A.C. to G.P.-11

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

Date: 18-05-2017

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

2. The petitioner seeks to assail the order dated
04.03.2014 (Annexure 5) passed by the Sub-Divisional Officer,
Sitamarhi Sadar, contained in Memo No.102/AA, by which his
PDS licence has been cancelled.

3. Learned counsel for the petitioner submits that the
petitioner is a PDS licence holder, bearing Licence No.65 of
2007, issued on 14.08.2007. It is submitted that vide letter dated
05.10.2013, the Sub-Divisional Officer, Sitamarhi Sadar issued a
show cause notice to the petitioner alleging, *inter alia*, that his
shop was found to be closed on 03.10.2013. The petitioner



answered the said show cause notice on 21.10.2013, whereafter the matter was put to rest. He further submits that vide Memo No.959/AA dated 09.12.2013, contained in Annexure B to the counter affidavit, a second show cause notice was issued to the petitioner making certain allegations regarding irregularities being committed in his PDS shop. In the said notice, it was alleged that some of the beneficiaries of *Antyodaya* Scheme had complained against him, on the basis of which certain enquiries were conducted and on the basis of such enquiry report, it was found that the petitioner had been indulging in malpractices in running the PDS shop allotted to him. Thus, a fresh notice was issued to him on 09.12.2013 calling upon him to show cause.

4. Learned counsel for the petitioner submits that the said notice did not contain the text of the allegations made by the respective complainants, inasmuch as even the names had not been supplied in the show cause notice issued against the petitioner. He further submits that the enquiry, which was conducted by the respondents, was wholly illegal and arbitrary as having been conducted behind his back and thus the notice suffers from the vice of violation of the principles of natural justice. He further submits that neither the complainants were permitted to be cross-examined nor was the text of the enquiry report ever supplied to petitioner. As such, the petitioner was prevented from



filing reply to the aforementioned show cause notice. He further submits that the impugned order has been passed for total non-consideration of his reply to the show cause notice and thus stands vitiated for the aforementioned reasons.

5. In response to the aforementioned submissions of the petitioner, a counter affidavit has been filed on behalf of the State, in which it has been stated that the petitioner was not served with a second show cause notice, vide letter No.959/AA dated 09.12.2013, with the same allegations and it was only after consideration of the reply to the show cause filed by the petitioner, that the impugned order dated 04.03.2014, contained in Memo No.102/AA, has been passed by the licensing authority.

6. It is submitted by the learned counsel for the State that the impugned order is wholly legal and valid and has been passed after assigning due reasons for the same and thus cannot be faulted on any count. He further submits that there has been no violation of the principles of natural justice as the petitioner was heard at all material times.

7. Having heard learned counsel for the petitioner and the learned counsel appearing on behalf of the State, it appears that issuance of notice is merely an empty formality. Notice issued to a person, who is to be deprived of his right to livelihood, has to be issued in such a manner so that he may be able to defend



his case in full. Non-issuance of the names of the allegationists and non-supply of the copy of the enquiry report to the petitioner go to the root of the matter and are wholly violative of the principles of natural justice. The impugned order suggesting that the licensing authority had himself conducted an enquiry is also demonstrative of the fact that the entire exercise was conducted behind the back of the petitioner, on account of which the impugned order stands vitiated and cannot be sustained.

8. Accordingly, this Court is of the considered opinion that the order impugned, contained in Memo No.102/AA dated 04.03.2014 (Annexure 5), is fit to be set aside and is, accordingly, quashed. In view of the cancellation order having been set aside, it is directed that the petitioner’s licence be restored.

9. With the aforementioned observations and directions, 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
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