

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3316 of 2014

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Jagdish Prasad Yadav S/O Chetu Yadav, resident of village- Mogaichapri,
P.S- Sono, District- Jamui.

.... Petitioner/s

Versus

1. The State Of Bihar through the Secretary, Weight And Measurement Department, Government Of Bihar, Patna.
2. The District Magistrate, Jamui.
3. The Sub- Divisional Officer (Supply Division), Jamui.
4. The Supply Officer, Sono Block, Jamui.
5. The Member, Nigrani Samiti, Sono, Jamui.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shambhu Sharan Singh, Adv.

For the Respondent/s : Mr. Ashok Kr. Choudhary, AAG -13

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

4 01-11-2017 Heard learned counsel for the petitioner and learned
counsel for the State.

The petitioner seeks to set aside the order dated 30.08.2013 passed by the District Magistrate, Jamui in Supply Appeal No. 4 of 2013 as well as letter dated 02.02.2013 communicated from the office of the Sub Divisional Officer (Supply Division), Jamui, whereby the petitioner's license No. 15/Sono/009/08 of the Public Distribution System has been cancelled on the ground of gross irregularities in pursuance of inspection report dated 24.09.2012.

Learned counsel for the petitioner submits that a mala fide inspection was conducted behind the back of the petitioner on



24.09.2012 by the Block Supply Officer, Sono Jamui and on the basis of such report, the petitioner was issued a show cause notice which was duly answered by him. However, the substance of the allegations were not clearly explained so as to afford an adequate opportunity of answering the allegation. Nevertheless, the petitioner had filed his reply to the show cause notice but the Licensing Authority without considering the reply filed by the petitioner, cancelled the license of the petitioner and the Appeal which was preferred against the said order, has also met a similar fate.

Learned counsel for the petitioner further submits that the impugned orders as contained in Annexure -5 & 6 are illegal, arbitrary and stands vitiated for non-consideration of the reply filed by the petitioner. Furthermore, there was no supply of enquiry report nor was the petitioner permitted to examine the allegationist on any count. The shop having been closed for only one (1) day was considered to be against the provisions of the law and therefore, the petitioner's license has been cancelled.

Learned counsel for the State after pointing out several paragraphs of the counter affidavit submits that no such averments were pleaded by the petitioner in his show cause and after due consideration, the petitioner's licence has been cancelled



for having committed serious irregularities. He, thus, submits that the writ application is devoid of any merit and is fit to be dismissed.

Having heard learned counsel for the petitioner and learned counsel for the State, it appears that the impugned orders suffers from non-consideration of the averments made by the petitioner. In the impugned orders, there is gross mis-application of mind by the concerned authorities. Furthermore, the Enquiry Report having not been furnished to the petitioner also indicates that there is a clear violation of the principles of natural justice. Non-consideration of the averments being a serious lacuna is also a fact which cannot be ignored by this Court. This aspect of the matter, has been settled in CWJC No. 3939 of 1989 decided on 6th of January, 1999. Paragraphs 6 to 9 states as under:-

“6. After having heard the learned counsel for the parties we are of the view that this application can be allowed on the first point as urged on behalf of the petitioner and as such it is not necessary to dwell upon the second question raised by the petitioner. The admitted facts is that the petitioner was granted licence to carry on business as a wholesale-dealer. The assertion made on behalf of the petitioner is that the proprietor of the firm fell ill and he had to go to Vellore for treatment and as such the shop was closed. In the show causes filed by the



petitioner this fact was asserted but the licensing authority without mentioning much less considering the same has cancelled the licence. Before cancellation of licence show cause notice was issued to the petitioner and the petitioner has filed show cause. In such a situation the licensing authority should have considered and assigned some reason though not elaborately before cancelling the licence. Non-consideration of averments made in the show cause and absence of any reason in the order, in our view, is a serious lacuna in the impugned order as the same shows a complete non-application of mind on the part of the licensing authority. Any order visiting consequence on the concerned person must assign reason otherwise the superior authority or the Court, in case of the order being challenged, will not be in a position to know the reason which has led the authority in passing the order.

7. Thus we find that there is force in the submission advanced on behalf of the petitioner. The impugned order is vitiated because of non-application of mind by the licensing authority. No doubt the appellate authority has considered the case of the petitioner but that will not cure the defect in the original order of the licensing authority. It was for the licensing authority to consider and decision as to whether any ground existed or not for cancellation of licence. It is well settled that when initial order



cancelling the licence is invalid. Such invalidity cannot be cured by the fact that the petitioner had an opportunity to say, whatever, he had to say, before the appellate or revisional authority.

8. Thus, in our view, both the order i.e. order of the licensing authority as well as the appellate order are vitiated in law and both are quashed.

9. The next question is that what direction should be issued in this case after quashing of the orders. In usual course we would have remanded the matter for fresh consideration of the matter but as the matter is of the year 1986, we are of the view that it is not proper to send the matter for re-consideration, specially when in pursuance of the order passed by this Court the licence of the petitioner is being renewed up-to-date. The licence has been granted to the petitioner under Control Order issued under the provision of Essential Commodities Act with a view to make available the foodgrains and as such in future the petitioner is found to have violated the terms and conditions of the licence or not carrying out the business without any sufficient cause, it will be open to the authorities to take appropriate actions including cancellation of licence in accordance with law.”

In the result, the writ application is allowed.

The impugned order dated 02.02.2013 vide Memo No. 50/Anu.Anu and order dated 30.08.2013 passed in Supply



Appeal No. 4 of 2013 as contained in Annexures 5 & 5(i) are set aside. However, it shall not preclude the Licensing Authority from proceeding afresh in accordance with law and if it is found that the petitioner's case is genuine, they shall proceed to consider his case for renewal of the license if at all an application is made in that regard. The exercise in this regard should be completed within a period of four months of receipt/production of a copy of this order along with the application.

(Anjana Mishra, J)

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