

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19416 of 2010

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Shashi Bhushan Paswan S/o Sri Laxmi Paswan, R/o Village-Jhandapur
West, Post- Jhandapur West, P.S.- Bihpur, Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate-cum-Collector, Bhagalpur
3. The District Supply Officer, Bhagalpur
4. The Sub-Divisional Officer-cum-Licensing Authority, Naugachia,
Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bishwajeet Pandey
For the State : Mr. Anil Kumar Sinha, G.A.-1
Mr. Amaresh Kumar Sinha, A.C. to G.A.1
Ms. Aditi Hansaria, AC to GA 1

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

7 18-05-2017 Heard learned counsel for the petitioner and learned
counsel appearing on behalf of the State.

2. In pursuance of the earlier order, a counter affidavit has
now been filed bringing on record the stand of the State.

3. The petitioner has come to this Court challenging an
order dated 06.12.2009 passed by the Respondent No. 4 (i.e., Sub-
Divisional Officer-cum-Licencing Authority, Naugachia,
Bhagalpur contained in Memo No. 649 dated 06.12.2009 by which
the P.D.S. licence of the petitioner has been cancelled.

4. Learned counsel for the petitioner submits that vide
Memo No. 02 dated 09.07.2009, a show-cause notice had been
issued to the petitioner which did not contain the allegations and
on the basis of the report submitted by the Supply Inspector,
Bihpur, conducted behind the petitioner's back alleging black-



marketing, the petitioner was asked to show-cause. It is submitted that the show-cause reply filed by the petitioner was rejected without assigning any reason and vide Memo No. 187 dated 29.07.2009, the Respondent No. 4 suspended the licence of the petitioner and further directed him to furnish explanation within a period of three days why his licence be not cancelled.

5. Learned counsel for the petitioner thus submits that not only was there irregularity in the report submitted by the Supply Inspector but such a report was never communicated to the petitioner and the same having been conducted behind his back, the petitioner was at a total loss in filing his reply to the show-cause notice.

6. It is further submitted that though the petitioner submitted his reply on 05.09.2009 itself, the Licencing Authority vide Memo No. 649 dated 06.12.2009 without considering his reply, has illegally and arbitrary cancelled the licence of the petitioner causing him serious loss of livelihood. Assailing the aforementioned order contained in Memo No. 649 dated 06.12.2009, learned counsel for the petitioner submits that the said order has been passed in utter violation of the principles of nature justice inasmuch as no enquiry report was ever supplied to him. Furthermore, the provisions of Section 11(2) of Bihar Trade Articles (Licences Unification) Order, 1984 sufficiently protects the Licencee inasmuch as in the said sub-clause, it has been



clearly stated that the licence can be suspended for a period not exceeding ninety days and such suspension shall be made only with regard to such items under which the contravention is said to have been made.

7. Learned counsel for the petitioner submits that the impugned order of cancellation has been passed only after a period of four months which is also against the provisions of the order.

8. His further contention is that no licence can be cancelled without following the procedure such as serving of enquiry report and after giving adequate opportunity to answer the charges as levelled against him. It has been submitted by the petitioner that there being a statutory violation of such contentions as detailed in Section 11(2), the impugned order stands vitiated and is fit to be quashed.

9. Learned counsel appearing on behalf of the State submits that the petitioner having contravened the provisions of the Licencing order had been subjected to a proper show-cause notice and it was only thereafter that the licence of the petitioner was suspended and, subsequently, cancelled. He submits that such an order is an appealable order and the petitioner can very well seek his alternative remedy. As such, the writ application is devoid of merit and is fit to be dismissed.

10. Having heard learned counsel for the petitioner and learned counsel appearing on behalf of the State, it appears that



the impugned orders passed against the petitioner are wholly in contraventions of the statutory provisions of law as stated above and, therefore, subjecting the petitioner to the alternative remedy, would occasion miscarriage of justice, especially when there has been clear violation of the principal of natural justice.

11. Accordingly, this Court is of the considered opinion that impugned order passed by the respondents are wholly without jurisdiction inasmuch as the provisions of the licence order have not been complied and the impugned order has been passed beyond a period of 90 days which is the statutory requirement. This Court also feels that the notice which proceeded the cancellation order is also fit to be set aside inasmuch as it did not contain the enquiry report and the petitioner was kept in the dark regarding the charges as made out against him. In the result, the writ application is allowed.

12. The impugned order dated 06.12.2009 and the notice dated 09.07.2009 are quashed.

13. The licence of the petitioner also stands restored as a natural corollary to the same.

14. However, there shall be no order as to costs.

(Anjana Mishra, J)

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