

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16183 of 2014

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Vidya Nand Prasad son of Sri Ram Deo Prasad, resident of village-
Naurangab, Police Station- Mufassil, District- Gaya

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Food & Consumer Protection Department,
Government of Bihar, Patna
3. The Additional Secretary, Food & Consumer Protection Department,
Government of Bihar, Patna
4. Joint Secretary, Food & Consumer Protection Department, Government
of Bihar, Patna
5. The District Magistrate cum Chairman, District Licensing Authority
under Public Distribution System (Control) Order, 2001, District- Gaya
6. The Additional District Magistrate, Gaya
7. The District Supply Officer cum Secretary, District Licensing Authority
under Public Distribution System (Control) Order, 2001, District- Gaya
8. The Sub Divisional Officer, Sadar Gaya, District- Gaya
9. The Block Supply Officer, Manpur Block, District- Gaya
10. The Panchayat Secretary, Grampanchayat, Nauranga, Block- Manpur,
Sub Division- Sadar Gaya, District- Gaya

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kumar Dharendra Pratap Singh, Advocate
For the Respondent/s : Mr. Amish Kumar, AC to AAG -8

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL ORDER

3 04-05-2017 Heard learned counsel for the petitioner and

learned counsel for the State.

The petitioner has filed the present



application seeking to set aside the order dated 19.06.2014 and the subsequent order dated 24.07.2014 passed by the Commissioner, Magadh Division in Supply Revision Case No. 228 of 2013, the order dated 23.09.2011 passed by the Additional Collector, Gaya in Supply Appeal No. 159 of 2008 and the order dated 27.03.2008, passed by the Sub Divisional Officer, Sadar Gaya (Annexure-3), by which the petitioner's PDS Licence No. 03/92 has been cancelled on the basis of notice dated 18.01.2008 (Annexure-1). The petitioner further prays for issuance of writ in the nature of *Mandamus* commanding the respondents to restore the PDS License No. 03/92 and to restore the supply of Fair Price Articles to the petitioner under the Public Distribution System.

Learned counsel for the petitioner submits that the entire proceedings initiated against the petitioner stood vitiated as the very notice dated 18.01.2008 was against the statutory provisions of law inasmuch as only three days' notice was afforded to him for answering the allegation made in the show cause notice issued against him. He further submits that even in the notice, no date of inspection/enquiry was given nor was the Enquiry Report ever forwarded with the notice which has put the petitioner at a total loss and on this account alone, the



notice stands vitiated. He further submits that any proceeding which followed thereafter, thus, being in violation of the Principle of Natural Justice, are vitiated and fit to be set aside. He further submits that the order of cancellation (Annexure-3) which was passed subsequent to the issuance of notice was also in violation of the Principles of Natural Justice inasmuch the show cause offered by the petitioner to the earlier notice was wholly ignored and impugned order of cancellation was passed on 22.03.2008, when the petitioner's show cause had already been received on 08.03.2008. Thus, the impugned order as contained in Annexure-3, was also fit to be set aside.

Learned counsel for the petitioner has also drawn the attention of the Court to the two subsequent orders passed by the Appellate as well as the Revisional Authority as contained in Annexures – 5, 7 and 8 which have followed as a natural corollary to the earlier impugned orders and in those orders as well, at no point of time petitioner was afforded an opportunity to present his case or defend himself. He thus, submits that the impugned action of the respondents is wholly illegal and arbitrary and warrant interference by this Court under Article 226 of the Constitution of India.

Learned counsel for the State has also filed a



counter affidavit and at Paragraph-7 of the counter affidavit, the Authorities have submitted that when Shri Janardan Prasad Agarwal, Executive Magistrate, Sadar Gaya, duly enquired the shop of the petitioner on 28.12.2007, it was found closed. As such, the notice was issued to him on 18.01.2008 and in response thereto the petitioner filed his explanation on 08.03.2008 after a lapse of 40 days. As such, the show cause filed by the petitioner was not considered and the impugned order has been passed against him. Though in paragraph-9 the respondents have submitted that the Licensing Authority considered the show cause of the petitioner and cancelled the licence, yet the impugned order does not indicate any reason for cancellation of the same. It further appears from the counter affidavit that the petitioner has been knowingly absenting himself from the proceeding which resulted in passing of the subsequent orders.

Thus, such a bald statement made by the respondents cannot be accepted by this Court. This Court, however, is of the considered opinion that the petitioner was not afforded sufficient material to participate in the proceedings as there is no reference to any evidence being led or any Enquiry Report having been forwarded to him.



Having heard learned counsel for the petitioner and learned counsel appearing on behalf of the State and after due consideration of all facts and circumstances, it appears from the materials available on record that from the very outset the notices which were issued against the petitioner was wholly irregular inasmuch as even the date of enquiry was not mentioned therein so as to enable the petitioner to offer his explanation in accordance with law. It further appears from the cancellation order (Annexure-3) that no reasons, whatsoever, have been assigned in the said order. The assertion of the counsel of the petitioner that the show cause offered by him had remained wholly ignored stands substantiated by the impugned order itself and, therefore, cannot be sustained in the eye of law. It, thus, appears that the notice as well as the cancellation order are both against the principles of law and the statutory provision of Trade Control Unification order, 2001. Thus, any other order which followed after the order which stands vitiated is also null and void and fit to be quashed.

For the reasons aforementioned and after considering the aforesaid facts and circumstances of the case, this Court sets aside the order dated 18.01.2008 (Annexure-1) and 27.03.2008 (Annexure-3). It thus, also follows that the



orders passed by the Appellate Court and the Revisional Court as contained in Annexures 5 & 7 also stand set aside.

Further, as a consequence of the aforementioned setting aside of the order of cancellation, the PDS dealership of the petitioner stands restored with a direction to the District Supply Officer-cum-Secretary and the Sub Divisional Officer, Gaya (respondent nos. 7 & 8) to proceed in accordance with law.

In the result, the writ application stands allowed.

However, in the facts and circumstances of the case, there shall be no order as to costs.

(Anjana Mishra, J)

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