

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22162 of 2014

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Most. Urmila Devi, W/o Late Mahadev Ram, R/o Barahiya Nagar Panchayat, P.S. -
Barahiya, District-Lakhisarai

.... Petitioner/s

Versus

1. The State of Bihar through Secretary, Food & Civil Supply Department, Govt. of Bihar, Patna.
2. The Divisional Commissioner, Munger.
3. The District Magistrate, Lakhisarai.
4. The Sub Divisional Officer, Lakhisarai.
5. The Block Supply Officer, Lakhisarai.

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Anujit Sinha, Advocate
For the S t a t e : Mr. Obaidullah, A.C. to S.C.-10

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

Date: 27-07-2017

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

2. The petitioner seeks cancellation of the order dated 07.08.2013, contained in Memo No.507, passed by the Sub-Divisional Officer, Lakhisarai (Annexure 4), whereby and whereunder her P.D.S. licence has been cancelled. The petitioner further seeks to set aside the order dated 05.11.2014 (Annexure 8) passed by the Divisional Commissioner, Munger, in Supply Revision No.284/2014, by which he was pleased to reject the revision application filed by the petitioner and affirm the order dated 10.09.2014 (Annexure 6), by which the Collector, Lakhisarai



has dismissed the Supply Appeal Case No.07/2013, in which the order of the S.D.O. has been challenged. The petitioner thus seeks to set aside the order dated 10.09.2014 (Annexure 6) also along with the other orders.

3. Learned counsel for the petitioner submits that the petitioner was appointed as a P.D.S. Dealer on compassionate ground after the death of her husband on 28.08.2007, bearing Licence No.11/85, in Barahaiya Nagar Panchayat and she had been operating her licence/PDS dealership without any complaint from any quarter and had been distributing the commodities to the satisfaction of the authorities without any grievance from any quarter.

4. However, on 19.06.2013, the petitioner received a notice, contained in Memo No.303 (Annexure 2), containing certain allegations against her, which were contained under four heads, namely, (a) *Antyodaya* consumers were being given 12 kg. wheat and 18 kg. rice, which are less than the permissible limit; (b) BPL consumers were being given 9 kg. wheat and 14 kg. rice, which are less than the permissible limit; (c) Kerosene oil was being given only two litres and (d) one Sahdev Dahdi has alleged that he had been provided food grains at intermittent intervals. In the said notice, the licensing authority had directed the petitioner to answer



the said allegations and provide the necessary documents and stock register, distribution register and cash memos, so that an enquiry could be conducted against herself.

It is important to mention here that the said notice was only with regard to the enquiry to be conducted against the petitioner and did not utter a single word regarding the proposed cancellation.

5. Responding to the aforesaid notice, the petitioner filed her reply giving the details of the supplies made by her and also provided the licensing authority with all the registers, which were relevant, namely, the *Antyodaya* stock register, BPL stock register, kerosene oil stock register/distribution register, so as to facilitate the enquiry, which was proposed to be conducted against the petitioner. However, to the utter shock of the petitioner, the petitioner has received a cancellation order dated 07.08.2013 contained in Memo No.507, by which the petitioner's licence has been cancelled.

6. Learned counsel for the petitioner submits that the said cancellation order was passed without dealing with the show cause filed by the petitioner and the enquiry report, which if at all existent, was never supplied to the petitioner nor was any notice to the proposed cancellation issued to the petitioner so as to afford her an opportunity of answering the same. Thus, he contends that there



is an absolute violation of the principles of natural justice and on this ground alone, the entire order stands vitiated.

7. Learned counsel for the petitioner further submits that the aforesaid order, as contained in Annexure 4, was challenged in an appeal, bearing Supply Appeal Case No.07/2013, but the learned Collector, without appreciating the fact and the ground raised by the petitioner that she had not been afforded any opportunity to show cause against the proposed cancellation and that no such show cause for cancellation was ever issued to her, and without applying his mind, has passed the order in an altogether mechanical manner rejecting her appeal. The order dated 07.08.2013 is also thus under challenge before this Court in the present application.

8. Learned counsel for the petitioner contends that even though no show cause notice was issued to the petitioner against the proposed cancellation, the learned Collector has illegally and arbitrarily rejected the appeal of the petitioner on the ground that the complaints of Kamla Devi, Jyoti Devi, Kavita Devi and one Suresh Prasad, who had made allegations against the petitioner, had not been answered in the reply to the show cause notice issued by the S.D.O. Learned counsel for the petitioner, however, counters the said ground by stating that since no show cause notice against the proposed cancellation was issued to the petitioner, there arose no



question of answering the said allegation and any such ground is wholly misconceived for depriving the petitioner of her valuable right to conduct her business under the PDS Scheme. He also thus asserts that neither was the show cause notice given to her nor was the enquiry report conducted against the previous show cause notice ever forwarded so as to afford her an opportunity to answer the same. Thus, the ground for cancellation is erroneous, wholly uncalled for and misconceived as also against the records of the case.

9. Having lost on both occasions, the petitioner filed Supply Revision No.284 of 2014 before the Divisional Commissioner, Munger Division but, unfortunately, ignoring all the settled principles of law, the revision application of the petitioner has also been rejected and hence, she has preferred the writ application seeking expeditious remedy for cancellation of the aforementioned orders and also restoration of her licence so that she can conduct her business and further her only source of livelihood.

10. A counter affidavit has been filed in this case, but it appears that there is no satisfactory explanation offered by the respondents nor any documents supplied so as to indicate that any show cause notice was issued to the petitioner against the proposed cancellation. There is also nothing on the record to show as to



whether any enquiry report was served on the petitioner so as to afford her an opportunity to answer the same.

11. Having heard learned counsel for the petitioner and the learned counsel for the State, it appears that the entire order of cancellation is based on *non est* grounds and is wholly against the principles of natural justice. It is well settled principle of law that if a show cause is issued for a particular reason, the result which shall follow can only extend to the reasons stated in the show cause and no further action can be taken. The principle has been well settled by the Apex Court in the case of *S.L. Kapoor v. Jagmohan (AIR 1981 Supreme Court 136)*, which categorically lays down that if a show cause for a particular purpose is issued and the cause has been shown for that purpose in those proceedings, an order different to those which was initiated cannot be passed.

12. Here, in the instant case, the show cause was merely issued to the petitioner for the purposes of conducting an enquiry. The petitioner answered the same only in such terms and forwarded the necessary documents so as to satisfy the authority concerned. Hence, the show cause being only the purpose for conducting an enquiry, the learned SDO could not have proceeded to cancel the licence of the petitioner. At best, he could have conducted the enquiry and submitted the report, which, admittedly, has not been



done in this case and the licensing authority has proceeded to cancel the licence of the petitioner without affording her an opportunity of showing cause against the proposed cancellation.

13. Thus, the cancellation is wholly illegal and arbitrary and violative of the principle of *audi alteram partem*. This Court in a catena of judgments has already settled the issue and in a recent judgment in a similar matter passed in CWJC No.15858 of 2014 has reiterated and affirmed such issue. Thus, this Court has no hesitation in quashing Annexure 4, which is the order of cancellation of licence of the petitioner issued by the licensing authority.

14. Having perused the subsequent orders passed by the Collector as well as the Divisional Commissioner, it appears that both of them have failed to give scant attention to the basic tenet of law as the orders impugned have been passed in violation of the principles of natural justice and also against the provisions of Section 7(ii) of the Public Distribution System (Control) Order 2001, which clearly states in Section 7(ii) that :

“7. Suspension and Cancellation of the Licence:-

- (i)*
- (a)*.....
- (b)*
- (c)*



(d).....

(e).....

(ii) *If any licensee contravenes any provision or any terms and conditions of license or any of his duties and responsibilities or any order of State Government then without prejudice to any other action that may be taken against him under the Essential Commodities Act, 1955 (Central Act 10 of 1955), his license may be cancelled by the Licensing Authority by written order.*

No order of cancellation shall be made under this clause unless the licensee has been given a reasonable opportunity stating its case against the proposed cancellation.” The similar matter shall be disposed by the Licensing Authority within a month.”

15. Patently and manifestly from the record of the case, no show cause notice was ever issued to the petitioner. Hence, the appellate as well as the revisional authority has clearly erred and ignored the basic principle of law and thus, the subsequent orders also stands vitiated. Accordingly, the orders dated 07.08.2013, 10.09.2014 and 05.11.2014, as contained in Annexures 4, 6 and 8 respectively, are, accordingly, quashed and set aside. The petitioner’s licence is directed to be restored and she may be permitted to continue her licence and the supply to her P.D.S. dealership shall be resumed accordingly.



16. 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.

17. Before I part with this judgment, it has been noticed by this Court that the authorities empowered under the PDS (Control) Order have failed to notice the relevant provisions of law in many of the cases which have come before this Court. As such, this Court is constrained to issue a direction to the Principal Secretary, Food & Civil Supplies, Bihar to ensure that such orders are not perpetuated by the concerned authorities as they only surmount litigation before this Court and harass the P.D.S. Dealers, who have been functioning to serve their livelihood.

18. Let a copy of this judgment/order be supplied to the State Counsel so as to enable him to forward it to the concerned authority.

(Anjana Mishra, J)

PNM

AFR/NAFR	NAFR
CAV DATE	N.A.
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