

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14502 of 2014

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1. Mukesh Singh S/o Sri Sajawal Singh Resident of Village Malkaunia, P.S.
and Block Dhaka, District East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Commission, Tirhut Division, Muzaffarpur.
3. The District Magistrate, East Champaran, Motihari.
4. The Sub Divisional Officer, Sikrahna, Dhanka, District East Champaran.
5. The District Supply Officer, East Champaran, Motihari.
6. The Block Supply Officer, Sikrahana, District Motihari.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Krishna Nandan Singh
Mr. Tanay Bhasker
Mr. Sriram Krishna
Mr. Kamal Deo Sharma

For the Respondent/s : Mr. Md. Raisul Haque, SC 10
Md. Obaidullah, AC to SC 10

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

3 27-07-2017 Heard learned Senior Counsel for the petitioner and
learned counsel for the State.

The petitioner seeks issuance of writ in the nature of certiorari for quashing the order dated 28.10.2013 passed by the Commissioner, Tirhut Division, Muzaffarpur in PDS Appeal No. 154 of 2011 by which the revision filed by the petitioner (Annexure-7) was dismissed in PDS Appeal/Revision No. 154 of 2011 vide his order dated 27.10.2013. The said order was passed affirming the order of the District Magistrate, East Champaran as contained in Annexure-6 dated 15.06.2011 passed in



Supply Case No. 108 of 2010. Both the orders have been passed holding the petitioner's case to be time barred and have also been assailed in the present writ application.

Learned Senior counsel appearing on behalf of the petitioner submits that in response to an order dated 11.03.2003(Annexure-1) by which the show cause notice had been issued to the petitioner asking him to show cause against some allegations, the petitioner submitted his show cause answering and explaining the allegations made therein. The said show cause had been issued on the basis of a report of the Block Development Officer, Dhaka who had conducted an inspection in the shop of the petitioner. The Sub Divisional Officer, Sikrahna vide his order dated 16.05.2003, without appreciating the case of the petitioner and ignoring the contentions raised in the show cause filed by him, passed an order cancelling the PDS license of the petitioner.

Having suffered serious illness which was duly explained by the petitioner, the petitioner filed an Appeal/Revision on 20.04.2005 before the District Magistrate explaining the reasons for the delay in filing the appeal after duly annexing his medical certificates. The Collector upon considering all such facts and circumstances initiated an inquiry and called for a report from the District Supply Officer, Sikrahna who in turn vide his letter



bearing D.S.O.'s letter no. 144 dated 25.05.2005 asked for a report from the SDO, Sikrahna with regard to the contentions raised by the petitioner in his representation/appeal before the Collector. On 23.08.2005, a report was sent from the SDO, Sikrahna, (Annexure-5) wherein it was stated that an enquiry was conducted by the Block Supply Officer who dealt with the issue extensively and accordingly, the SDO recommended to the District Supply Officer for restoration of the license of the petitioner. However, it appears that no further order was passed on the said recommendation and the petitioner's case continued to languish.

It appears that under some mistaken advice, the petitioner once again preferred an Appeal before the Collector which was re-numbered as Appeal No. 108 of 2010. The learned Collector being unaware of the earlier recommendation of the SDO and considering the inordinate delay in filing the said application has, thus, rejected the case of the petitioner on the ground of delay and laches on the part of the petitioner. The revision which was filed also met with a similar fate. As a result, the petitioner has sought equitable remedy under Article 226 of the Constitution of India for redressal of his grievance and restoration of his license.

Learned Senior Counsel for the petitioner submits



that the entire orders passed against the petitioner are against the settled Principles of Law inasmuch as even the notice issued to the petitioner as early as in the year 2003 was wanting with regard to the fact that no Enquiry report was supplied to the petitioner alongwith the notice which proposed to suspend the license of the petitioner. It appears that on the basis of the report of the BDO, the license of the petitioner had been suspended and he had been asked to show cause which he had duly answered vide Annexure-2. The petitioner has fully countered the allegations made in the show cause notice issued vide Memo No. 118 dated 26.05.2003 but ignoring the same the petitioner's license was cancelled on the basis of the report of the BDO, copy of which was never supplied to the petitioner

Learned Senior counsel further contended that the report of the BDO was never given to the petitioner nor has the same been brought on record before this Court till date. It is further submitted that contrary to the Principles of Natural Justice, no names of the allegationist were ever given to the petitioner so as to make him aware of the true allegations raised against him and having not been supplied the names, the petitioner was unable to answer the contentions and allegations raised by the said allegationist. He, thus submits that there is clear violation of the



Principles of Natural Justice and the impugned order passed by the respondents are also against the several judgments and pronouncements of this Court in this regard. He further submits that the Appeal/Representation which was filed by him, though not in the proper format as is alleged by the respondent, was but in the nature of appeal as has been stated in the body of the application dated 24.02.2005 (Annexure-4) in which he had clearly explained the reasons for the delay. It appears that the delay had, in fact, been condoned at that stage by the learned Collector as in pursuance thereof an Enquiry report had been sought from the District Supply Officer. He thus, contends, that the rejection of his case on the ground of delay at this stage is wholly untenable, both on facts and law, and cannot be sustained. He, thus, prays that the impugned order being in gross violation of the Principles of Natural Justice and also being violative of the rights of the petitioner to earn his livelihood, stands vitiated and are fit to be set aside.

A counter affidavit has been filed on behalf of the State in which it has been fairly contended that the appeal filed by the petitioner was after a lapse of 7 years and the earlier application had, in fact, not been considered as an appeal as it was not in the proper nomenclature. Thus, the orders passed by the



Collector, subsequently having been ratified by the learned Commissioner, in the Revision Case No. 154 of 2011, is wholly legal and valid and is fit to be sustained. Thus, the writ application has no merit as Article 226 of the Constitution would not step into redress the grievance of a recalcitrant litigant who approached this Court at a belated stage for redressal of his grievance.

Having heard learned counsel for the petitioner and learned counsel appearing on behalf of the State, it appears that the impugned notice contained in Annexure-1 from the very initial stage was not legal and valid and the same having not been issued to the petitioner along with the copy of the enquiry report and the names of the allegationist who had made the same and on which enquiry which had been conducted, was vitiated. The non-consideration of the show cause filed by the petitioner also goes to the root of the matter and the impugned order was for that matter itself fit to be set aside.

So far as the petitioner's representation is concerned, the contention of the State that it was not an appeal, appears to be unfounded. A bare perusal of the representation of the petitioner reveals that all contentions and annexures were available for consideration before the Collector. Accordingly, the State Authorities could not ignore/reject the same as not being in the



proper format. Furthermore, though, not in the proper format, in view of the fact that the same had been entertained at that stage by the learned Collector and a report had been called for by him, this Court feels that in the interest of justice, it can be well said that the Collector had condoned the delay and had entertained the appeal, which advantages must accrue in favour of the petitioner. In pursuance of the said representation/appeal filed by the petitioner, it appears that an enquiry was also conducted once again at the appellate stage and the SDO recommended in favour of the restoration of the license of the petitioner but, for some oblique reasons, the same was never pushed forward so as to restore the license of the petitioner and his case continued to languish for many number of years. This led the petitioner, under some mistaken advice to file another appeal before the Collector which evidently has been considered to be barred by the principle of limitation.

Having considered the entire gamut of circumstances and in view of the fact that earlier recommendation had been made by the SDO before the same authority for restoration of the license of the petitioner but because the Collector was unable to pass any order on the same for some oblique reasons, the advantages, in the opinion of this court, should accrue to the petitioner and not to the



State, as much loss has been rendered to the petitioner depriving him of his livelihood for a considerable number of years. This Court, after considering all the facts and circumstances of the case, and being conscious of the facts that two orders passed subsequently in the appeal as well as the revision have been dismissed on the ground of limitation, is thus inclined to set aside the same. The order dated 15.06.2011 passed in Misc. Case No. 108 of 2010 & order dated 28.10.2013 passed in P.D.S. Appeal No. 154 of 2011 contained in Annexures 6 & 7 are thus, quashed.

This Court, however, is remitting back the matter to the Collector to consider the case of the petitioner in the light of the favourable recommendation made in favour of the petitioner vide letter no 180 dated 23.08.2005 and if there is no further legal hindrance, restore the license of the petitioner. The aforementioned consideration should be made by the Collector preferably within a period of three months from the date/receipt of a production of a copy of this order.

With the aforementioned observations/direction, the writ application stands disposed of.

(Anjana Mishra, J)

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