

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18053 of 2014

=====

1. Sri Kant Singh Son of Sri Samsher Singh, resident of village and Post Office- Siadih, Police Station- Koach, District- Gaya

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Consumer and Food Protection, Government of Bihar, Patna
2. The Principal Secretary, Department of Consumer and Food Protection, Government of Bihar, Patna
3. The District Magistrate, Gaya
4. The Sub Divisional Officer, Tikari, Gaya
5. The District Supply Officer, Gaya
6. The Block Supply Officer, Koach, Gaya

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Ashok Kumar Karna

For the Respondent/s : Mr. Shiv Kumar, A.C. to G.A.-3

=====

CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

6 01-11-2017 Heard learned counsel for the petitioner and learned counsel appearing on behalf of the State.

The petitioner seeks to assail an order dated 28.07.2014 passed by the Respondent No. 4 (The Sub Divisional Officer, Tekari, Gaya) whereby and whereunder the Respondent No. 4 had cancelled the licence of the petitioner without considering the show cause filed by him in response to notice dated 17.07.2014.

Learned counsel for the petitioner submits that notice which was served on the petitioner did not contain a copy of the enquiry report and the petitioner was afforded three days' time to answer the same which he duly answered after receipt of the same. Learned counsel for the petitioner further submits that neither the



name of the allegationists who had complained against the petitioner was communicated to him nor he was afforded a reasonable opportunity to answer the complaint of the said allegation nor was he allowed/examined/cross-examined them with regard to the allegations made against the petitioner's dealership which has now been cancelled.

Learned counsel for the petitioner also submits that one of the allegations against the petitioner is that his shop had been found closed on the particular date i.e., 12.07.2014 and, therefore, the dealership has been cancelled for closure being against the provisions of the Control Orders.

It is further submitted by learned counsel for the petitioner that the petitioner had lifted food-grains, but had not distributed the same is also false and farfetched inasmuch as the petitioner had just lifted the food-grains only a day or two prior to the impugned notice and, therefore, the said allegations are also wholly farfetched. He, thus, submits that in view of the settled law of this Court and that there being no substantial deviation from the Control Orders and moreso because no sufficient opportunity had been provided to the petitioner which was, but a violation of the principles of natural justice, the impugned notice as well as order of cancellation stands vitiated and are fit to be set aside.

Learned counsel appearing on behalf of the State has



seriously contested the matter and stated that the impugned notice is self-explanatory and contains all the allegations which were required and which were brought to the notice of the petitioner and, therefore, his contention that the impugned notice does not stand the test of reasonableness and does not contain the enquiry report is purely misconceived. He further contends that the impugned order has been passed after due consideration of the show-cause which can be seen from a bare perusal of the order contained in the impugned writ application. As such, this Court may not like to interfere in the order passed by the Licensing Authority and the writ application is, thus, fit to be dismissed.

Having heard learned counsel for the petitioner and learned counsel appearing on behalf of the State, it appears that the impugned notice was issued without furnishing a copy of the enquiry report to the petitioner. It is also patently and manifestly clear that the names of the allegationists and their statements, however, were not supplied to the petitioner which could afford him sufficient opportunity to answer the same.

So far as the question of closure of shop for one day is concerned, the issue stands resolved by a Division Bench judgment of this Court reported in 2012 (3) P.L.J.R. 583 (Turant Lal Paswan Vs. State of Bihar). Paragraph Nos. 4 and 5 of the said judgment are being quoted hereunder:-



“4. We find that admittedly the petitioner did close the shop on the particular day. Though, the action of keeping the shop closed on one particular day was in breach of the terms and conditions of the licence and may not be justified, was not such grave violation that would entail cancellation of licence.

5. For the aforesaid reasons, this writ application is allowed. Order dated 26th April, 2010 made by the Sub-Divisional Officer, Sadar, Darbhanga is quashed and set aside. The legal consequences shall follow.”

Thus, the closure of the shop for one day is not such an allegation which should have necessitated the cancellation of the licence of the petitioner. So far as the other allegations are concerned, it appears to this Court that neither enquiry report was furnished to the petitioner nor was a copy of the allegations and the statements of the allegationists supplied to him so as to afford him a reasonable opportunity of answering the allegations and in the considered opinion of this Court is a clear violation of the principles of natural justice.

Having considered all these facts and circumstances and in view of the settled law, this Court finds that the impugned notice as well as the order of cancellation of licence of the petitioner are both vitiated and do not stand the test of reasonableness.

Accordingly, the order dated 28.07.2014 passed by Respondent No. 4 (The Sub Divisional Officer, Tekari, Gaya), vide Memo No. 100 and the Notice dated 17.07.2014 vide Memo No. 370 (Annexure-1) are quashed and set aside.

The licence of the petitioner stands restored.



It would, however, be open to the Licensing Authority to take fresh steps in accordance with law after following all necessary procedures before passing any orders. It also follows that in the interregnum on restoration of the licence of the petitioner and the supplies should also be restored in his favour.

(Anjana Mishra, J)

Saif/-

U			
---	--	--	--

