

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19406 of 2014

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Dipan Ram, S/o Late Jhalu Ram, Resident of Village - Salahpur, P.S. - Deoria,
District - Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar through the Joint Secretary, Food & Consumer Protection Department, Patna
2. The Collector, Muzaffarpur
3. The Sub-Divisional Officer, (West), Muzaffarpur
4. The Block Supply Officer, Paroo, Muzaffarpur

.... Respondent/s

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Appearance :

For the Petitioner : Mr. D.N. Tiwari, Advocate
Mr. Anujit Sinha, Advocate
For the State : Mr. Nirbhay Prashant, A.C. to S.C.-17

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

Date: 03-08-2017

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

2. The petitioner, in the present writ application, seeks to set aside the order dated 17.06.2013, issued under Memo No.615, as contained in Annexure 2, by which the licence, bearing Licence No.23030058/08, granted to him under the Fair Price Shop Order and/or the PDS (Control) Order, 2001 for carrying on business of Fair Price Shop has been cancelled by the Sub-Divisional Officer, West, Muzaffarpur. The petitioner further prays for quashing the order dated 27.06.2014, as contained in Annexure 1, passed in Appeal Case No.09 P.D.S./2013-14, by which the learned Collector,



Muzaffarpur has rejected the appeal preferred by the petitioner against the aforesaid order dated 17.06.2013.

3. Learned counsel for the petitioner submits that the petitioner had been running his PDS shop since the time the licence was issued in his favour without any complaint from any quarter, but all of a sudden, vide Annexure 3 dated 13.04.2013, issued by the SDO, West, Muzaffarpur, contained in Memo No.415, the petitioner was asked to show cause as to why his licence be not cancelled in view of the enquiry report given by the In-charge Block Supply Officer, Paroo, vide his letter dated 189 dated 06.04.2013, by which the consumers of Mohabbatpur Panchayat of Ward Nos.1, 2, 4, 5 and 6 had demonstrated before the aforesaid functionary regarding non-supply/irregular supply of ration by the petitioner's shop. It was in pursuance of such a report that the petitioner was issued the aforementioned notice, calling upon him to show cause within three days as to why his licence be not cancelled and that he shall produce before the SDO, West, Muzaffarpur, the relevant distribution register as well as the coupons deposited before him.

4. Learned counsel for the petitioner further submits that the aforementioned notice (Annexure 3) did not contain details of the allegations made against the petitioner inasmuch as he was also



not provided the names of the allegationists nor was the copy of the enquiry report, which formed the basis of the impugned notice. He, thus, submits that the petitioner was not afforded an adequate opportunity of answering the show cause notice in its entirety as the notice was wholly vague and without any substance. He further submits that in response to the aforesaid notice, the petitioner filed his reply on 16.04.2013 explaining clearly that he was responsible for making supplies to only Ward Nos.9 and 10 and not to those of Ward Nos.1, 2, 4, 5 and 6 and the allegation levelled against him is wholly misconceived. He further clearly supported his contention by filing copies of the distribution register as well as coupon, which have been called for by the S.D.O. It is, however, submitted by the learned counsel for the petitioner that the learned S.D.O. without appreciating the case of the petitioner in total violation of the principles of natural justice has passed the impugned order cancelling the licence of the petitioner in an altogether arbitrary and illegal manner. He further submits that the appeal preferred against the aforementioned cancellation order before the Collector also met with a similar fate which has resulted in the petitioner's moving this Court for redressal of his grievance and restoration of his licence, in accordance with law.

5. Learned counsel for the petitioner further submits



that the entire issue regarding issuance of enquiry report along with the notice for cancellation has been the subject-matter of several writ applications, including the matter which came before this Court in CWJC No.15858 of 2014, which was disposed of on 29.06.2017, wherein this Court, after considering the similar issue, has been pleased to quash the order passed by the SDO and also the appeal which had been preferred against the same.

6. Learned counsel appearing on behalf of the State, however, submits that the petitioner has well an opportunity of filing a revision before the Divisional Commissioner, Tirhut Division, Muzaffarpur, in the light of Letter No.5738 dated 23.06.2011, issued by the Additional Secretary, Food and Consumer Department, Government of Bihar, Patna and, therefore, the writ application before this Court is not maintainable and fit to be dismissed.

7. Having considered the rival submissions of the parties, this Court is of the opinion that the petitioner has well a legitimate grievance, which can be raised before this Court under Article 226 of the Constitution of India. It is apparent from the impugned notice that neither the enquiry report was forwarded along with the impugned notice nor was the details of the allegations levelled against the petitioner made available to him so



as to afford him an adequate opportunity of answering the same as it formed the basis of the impugned notice.

8. The submission of the learned counsel for the petitioner that the said notice is wholly violative of the principles of natural justice, holds credence and acceptable to this Court as such a direction is also in line with the statutory rules as contained in Rule 7(ii) of the Public Distribution System (Control) Order 2001, which is reproduced hereunder:

“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.”



9. In the considered opinion of this Court, non-supply of the enquiry report and issuance of a vague notice do not amount to giving a reasonable opportunity of hearing against the proposed cancellation. This issue has also been dealt with in the case of ***Krishna Kumar Srivastava Vs. The State of Bihar & Ors.***, reported in ***2013(3) PLJR 249***, wherein in an identical situation the Court has recorded that when an action entails civil consequences upon a party, in such circumstances, the show-cause notice must include the copy of the enquiry report so that the person concerned can give reply effectively in the matter. It will be relevant to quote paragraph no.3 of the aforesaid judgment which reads as follows:-

"3. Be that as it may, since notice itself is vague and does not contain requisite details, the order passed on the basis of the same has to be held as illegal. Accordingly, impugned order of the Sub-Divisional Officer, Sadar Ara dated 13.7.2012, as contained in Annexure-1, is quashed. He is granted liberty to issue fresh notice to the petitioner giving the particulars of the allegations enclosing supporting documents to enable the petitioner to file a proper reply within a reasonable time. Thereafter, he will pass fresh orders in the matter after considering the reply, if filed by the petitioner within the time fixed, in accordance with law."

10. From the facts of the present case, it can well be deciphered that on both counts, the learned S.D.O., while issuing the impugned notice (Annexure 3) and while passing the impugned order, which is Annexure 2, has clearly erred in law inasmuch as



neither was the notice accompanied by an enquiry report nor was the clear charges raised against the petitioner made explicitly clear in the same. Furthermore, non-consideration of the show cause filed by the petitioner also goes to the root of the matter and vitiates the impugned order.

11. In the result, the impugned notice dated 13.04.2013,, as contained in Annexure 3, impugned order dated 17.06.2013, as contained in Annexure 2, and the consequential appellate order dated 27.06.2014 passed by the Collector, as contained in Annexure 1, are set aside. The writ application is, thus, allowed. However, in the facts and circumstances, there shall be no order as to costs.

12. Furthermore, since the petitioner’s livelihood has been affected in all those years, this Court further directs that the licence of the petitioner be restored and resumption of the supply of food grains etc. to his PDS shop be continued, in accordance with law.

PNM

(Anjana Mishra, J)

AFR/NAFR	NAFR
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