

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17638 of 2015

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Arbind Kumar Sudhakar S/o Chandrika Prasad resident of Mohalla - Sardha Digha,
Police Station - Dhanarua, District - Patna

.... Petitioner/s

Versus

1. The State of Bihar through Collector, Patna
2. The SDO, Masaurhi
3. The B.S.O., Dhanarua

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. N.K. Agrawal, Sr. Adv.
Mr. Vijay Anand, Adv.

For the Respondent/s : Mr. Sarvesh Kumar Singh, AAG-13
Mr. Tej Pratap Singh, AC to AAG-13

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 07-04-2017

Heard learned counsel for the petitioner and counsel for
the State.

In the present case, the order dated 7.7.2015 contained in
Memo No. 258 dated 8.7.2015 passed by the S.D.O. cum Licensing
Authority, Masaurhi is under challenge wherein the licence of the
petitioner has been cancelled.

An inspection was made, it was found that the petitioner is
not running the P.D.S. shop in terms of the licence or the condition
imposed under the Bihar Control Order, 2011 and, having found his
involvement in committing illegally, has lodged First Information
Report being Dhanarua P.S. Case No. 245 of 2015 under Section 7 of
the E.C. Act making an allegation of commission of offence against



the petitioner. On the basis of inspection report, the S.D.O., Masaurhi has passed order thereby cancelled the licence.

A limited grievance has been raised that before passing the impugned order, the petitioner was neither heard nor show-cause was given to him and, as such, it is an act of arbitrariness as well as violation of principle of natural justice.

Learned counsel for the State has taken a plea that there is an alternative forum of appeal, instead of deciding the case in writ jurisdiction, the petitioner should have approached the appellate authority.

The State has filed its counter affidavit from where it does not appear that before passing an order of cancellation, the petitioner was ever given an opportunity of being heard or was served show-cause notice.

In the case of *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai & Ors.* reported in (1998) 8 SCC 1, the Hon'ble Apex Court has held that if the petitioner has not been given notice or heard, in such a situation, he cannot be asked to exhaust alternative remedy and the writ court should not refuse to entertain writ petition.

Admittedly the counter affidavit does not disclose that any hearing or show-cause has been given to the petitioner before passing the impugned order.



In that view of the matter, the order dated 7.7.2015 contained in Memo No. 258 dated 8.7.2015 is set aside and the matter is remanded back to the S.D.O., Masaurhi, who will be obliged to serve a copy of the report as well as issue the show-cause notice, inasmuch as, after hearing the petitioner will take decision in accordance with law and would pass a reasoned order.

This Court has not given any opinion on the merit of the case.

With the aforementioned observation and direction, this application is allowed to the aforementioned extent.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.04.2017
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