

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9478 of 2016

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1. Ram Sanjeevan Rai Son of Late Anup Rai, resident of Village- Kurhar ,P.S. Nanpur ,District - Sitamarhi

.... Petitioner/s

Versus

1. The State of Bihar Through The Secretary, Food and Consumer Protection Department, Patna
2. The commissioner Tirhut Devision Muzaffarpur
3. The Collector, Sitamarhi
4. The Sub-Divisional Officer, Pupari
5. The Block Development Officer Bokhra, Sitamarhi
6. The Block Supply Officer, Bokhra, Sitamarhi

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nand Kishore Prasad Sinha
For the State : Mr. Ac to SC 22

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 21-03-2017

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

In the present writ petition, petitioner is challenging the order dated 5.4.016 passed by the Commissioner, Tirhut Division, Muzaffarpur in E.C. Appeal No. 20 of 2016 (Annexure-7) who has affirmed the order dated 14.2.2015 passed by the Collector, Sitamarhi in Appeal Case No.3 of 2013 and thereby affirmed the order of the Sub Divisional Office who has cancelled the licence of the petitioner vide order dated 4.5.2012.



Petitioner is running Public Distribution System shop under Licence No.22 of 1992, the Block Development Officer-cum Block Supply Officer, Bokhra has made an inspection on three dates i.e. 14.1.2012, 16.1.2012 and 17.1.2012 and on all the dates shop of the petitioner was found closed. Accordingly Licensing Authority i.e. Sub Divisional Officer, Pupri issued show cause to the petitioner having made allegation of closure of his shop on 14.1.2012, 16.1.2012 and 17.1.2012 without information. In pursuance thereof the petitioner filed an explanation, took plea that he had gone outside village for treatment of his mother which he had recorded the same on the display board. The Sub Divisional Officer, Pupri did not find favour with the petitioner and cancelled his licence.

The aforesaid order was challenged before the appellate authority i.e. District Magistrate Sitamarhi in Appeal No. 3 of 2013 who vide order dated 14.12.2013 has rejected the same in turn challenged before the Commissioner, Tirhut Division, Mazaffarpur unsuccessfully in E.C. Appeal No. 20 of 2016.

The petitioner has raised grievance that his licence has been cancelled without assigning any reason when the petitioner in his show cause has taken specific plea the shop remained closed on 14.1.2012, 16.1.2012 and 17.1.2012 as he had gone



out side in connection with the treatment of his mother. There is no allegation that the petitioner was involved in the black marketing of the Kerosene Oil. The Sub Divisional Officer has passed the order of cancellation on the grounds which are not part of the show cause inasmuch as all the subsequent officers have affirmed the order without considering the fact that the order has been passed without giving opportunity to explain the imputation mentioned in the order of cancellation. It has further been submitted that the Sub Divisional Officer on the later occasion, during pendency of the appeal, has submitted a report, Kerosene Oil which was seized was not belonging to the petitioner and as such mere closure of shop on three days on account of remain busy in connection with treatment of his ailing mother, cannot be a ground for cancellation of the licence of the petitioner.

Learned counsel for the State submits that during inspection of his shop stock register could not be verified on account of the closure of the shop and as such it could not be verified whether the seized Kerosene oil has any connection with the petitioner.

But the fact remains that, in the show cause, no such allegation has been made, petitioner was involved in the black



marketing. The authorities have rejected his show cause without dealing with his plea of being out in connection with treatment of his old mother The petitioner closed down the shop as he had had gone for treatment of his mother and that can not be a ground for cancellation of the licence in the facts and circumstances when show cause does not include the allegation of black marketing.

In such view of the matter, the orders dated 4.5.2012, 14.2.2015 and 5.4.2016 passed by the Sub Divisional Officer, Pupri, Collector, Sitamarhi as well as Commissioner, Tirhut Division Muzaffarpur are set aside. In view of setting aside of the aforesaid orders the Licensing Authority is directed to restore the licence of the petitioner.

With the aforesaid observation and direction is disposed of.

(Shivaji Pandey, J)

Vinay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.3.2017
Transmission Date	NA

