

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19676 of 2015

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Md. Abdullah, Son of Late Kamrul Hoda, Resident of Village+P.O.- Bela, Police Station- Ramgarhwa, District- East Champaran. P.D.S. Dealer of Gram Panchayat Bela under Block Ramgarhwa, District- East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar
2. The State of Bihar, through Collector, East Champaran (Motihari)
3. The Commissioner, Tirhut Division, Muzaffarpur.
4. The Collector East Champaran (Motihari)
5. The S.D.O. Raxaul, East Champaran (Motihari)
6. The Anchal Adhikari cum Block Supply Officer Ramgarhwa, East Champaran (Motihari)

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Adya Singh, Adv

For the Respondent/s : Mr. GA13- SMT. NAMRATA MISHRA

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 20-08-2018

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

2. The present writ petition has been filed for quashing the order dated 02.11.2015 passed by the Commissioner, Tirhut Division, Muzaffarpur, order dated 08.01.2015 in Supply Appeal No. 19/2013 by the District Magistrate, East Champaran, Motihari affirming the order contained in memo no. 519 dated 05.07.2013 passed by the Sub Divisional Officer, Raxaul by which licence of the petitioner's Fair Price shop bearing no. 18/2007 has been cancelled and monthly allotment



has been stopped; and further to restore the petitioner's licence.

3. Learned counsel for the petitioner makes a short submission to assail the order of cancellation, to the effect that the show cause reply filed by the petitioner was not considered at all. It is further submitted that the infirmity in the cancellation order can not be cured at the stage of appeal as well as in revision, hence the decision making process stands vitiated.

4. Learned counsel for the respondents appears and has been heard.

5. Having heard the parties and on a careful consideration of the materials on record, this Court finds merit in the writ petition. The respondents have not controverted the fact that the petitioner had filed the reply to the show cause before the Sub-Divisional Officer, Raxaul. A perusal of the impugned order of cancellation dated 05.07.2013 (Annexure-5) discloses that the show cause reply of the petitioner has not even been adverted to, much less discussed or reasons given for not accepting the plea of the petitioner.

6. In this view of the matter, the decision making process stands vitiated. The infirmity cannot be cured in appeal or in revision nor by reasons supplemented by filing a counter affidavit.

7. The impugned order dated 05.07.2013 (Annexure-5), the appellate order dated 08.01.2015 (Annexure-6) and the revisional



order dated 02.11.2015 (Annexure-7) are hereby quashed and the matter is remanded to the Sub-Divisional Officer, Raxaul for fresh decision after consideration of the petitioner’s show cause reply and after grant of opportunity of hearing to the petitioner in accordance with law. Licence of the petitioner shall be restored without delay until fresh orders are passed by the Respondent no. 5.

8. The writ petition stands allowed as above.

(Vikash Jain, J)

Chandran

AFR/NAFR	NAFR
CAV DATE	NA
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