

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4997 of 2017

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Md. Naimuddin Son of late Abdul Rajak, Resident of Village- Dakhaner, Prakhand (Block) and P.S. Paraiya, District- Gaya.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Food and Consumer Affairs, Bihar, Patna.
2. The Commissioner, Magadh Division, Gaya.
3. The District Magistrate, Gaya.
4. The Sub Divisional Officer, Tekari , Gaya.
5. The District Supply Officer, Gaya.
6. The Block Supply Officer, Tekari, Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sudhir Kumar Sinha, Adv
For the Respondent/s : Mr. S.RAZA AHMAD-AAG5

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 03-04-2017

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

2. The present writ petition has been filed for quashing the orders dated 24.05.2012, 16.06.2016 and 02.02.2017 passed by the learned S.D.O. Tekari, Gaya, District Magistrate, Gaya and Divisional Commissioner, Magadh Division, Gaya being the original, appellate and revisional authority, respectively, under the PDS (Control) Order, 2001 whereby and whereunder the S.D.O. Tekari has cancelled the licence of the PDD shop of the petitioner being Licence No. 4/91 and the order has been affirmed by both the authorities vide Supply Appeal No. 14/15 and Supply Revision Case No. 99/2016 without taking into consideration the show cause filed by the petitioner.

3. Learned counsel for the petitioner submits that the impugned order of cancellation itself is wholly arbitrary and illegal. A bare



perusal of the show cause notice dated 07.12.2011 discloses that the petitioner was called upon to answer three allegations based on the enquiry report dated 29.11.2011 to the effect that (a) the shop was found closed at the time of inspection, (b) certain complaints were received with regard to distribution of food grains and kerosene oil in an irregular manner and (c) the stock was not displayed on the notice board.

4. The petitioner duly filed his show cause reply dated 26.12.2011 on the aforesaid three issues, however, the impugned order of the Sub Divisional Officer has been passed in which there is narration of five issues which were found in course of inspection and the order of cancellation is based on the fact that the shop was found closed, food grains and kerosene oil was not being properly distributed and excess price was being charged from the consumers.

5. Learned counsel for the respondent appears and has been heard.

6. Having heard the parties and on consideration of the materials on record, this Court finds merit in the writ petition. The petitioner's submission bears out from a perusal of the show cause notice which has been issued in respect of three issues and the impugned order of cancellation which has taken into consideration the extraneous factors not mentioned in the show cause notice. In that view of the matter, the petitioner has been denied adequate opportunity of submitting his explanation in respect of such extraneous factors which is denial of the principles of natural justice. Such infirmity cannot also be cured in appeal or revision.

7. Accordingly impugned order dated 24.05.2012 (Annexure-4 series) as also the appellate order dated 16.06.2016 (Annexure-1) and the revisional order dated 02.02.2017 (Annexure-3) are hereby quashed and the matter remanded to the Sub-Divisional Officer, Tekari for taking decision afresh in the matter after serving show cause notice



upon the petitioner and granting an opportunity of hearing in accordance with law. Supplies to the petitioner shall be restored without delay until fresh orders are passed by the respondent no. 4.

8. The writ petition stands allowed as above.

(Vikash Jain, J)

Chandran/BT

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.04.2018
Transmission Date	NA

