

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.21832 of 2014

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Bishwanath Sah S/o Late Sukdeo Sah, Resident of Village- Laiya Tola, P.S.
Bettiah Muffasil, District- West Champaran.

.... Petitioner

Versus

1. The State of Bihar through the Collector -cum- District Magistrate, Bettiah ,
West Champaran.
2. The Collector-cum-District Magistrate, Bettiah, West Champaran.
3. The Sub Divisional, Officer, Bettiah Sadar, Bettiah, District- West Champaran.

.... Respondents

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Appearance :

For the Petitioner : Mr. Sanjeev Kumar, Advocate.

For the State : Mr. Umesh Kumar Roy, AC to GP-11

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 29-08-2018

The present writ petition has been filed for the
following reliefs –

*“(i) To quash the order dated 18.05.2009 passed by the
respondent no. 2 in Cr. M. No. 25/2000-2001 whereby and
whereunder the appeal of the petitioner has been
dismissed for default.*

*(ii) To quash the order dated 24.07.2000 contained in
Memo No. 641 passed by the respondent no. 3 whereby and
whereunder the license of the petitioner bearing no. 10/84
to run a shop under Public Distribution System at Laiya
Village of Bettiah Muffasil Police Station has been
cancelled.”*

2. Learned counsel for the petitioner submits that after
conclusion of hearing in the appeal, orders were reserved but the
incumbent appellate authority was transferred before the order was



pronounced. The successor in office of the appellate authority dismissed the petitioner's appeal for default in appearance without however granting any notice of hearing. It is further submitted that the impugned order dated 24.07.2000 cancelling the license of the petitioner is equally arbitrary and illegal. A show cause notice dated 30.05.2000 (Annexure-1) was issued for the purposes of suspension of the license, to which the petitioner filed his reply on 26.06.2000 (Annexure-2). The impugned order dated 4.07.2000 was however passed cancelling the PDS license of the petitioner without any show cause against the proposed cancellation.

3. Learned counsel for the respondents appears and has been heard. He refers to the counter affidavit but is unable to controvert the stand of the petitioner with regard to cancellation of the license without show cause notice being issued for the purpose.

4. Having heard the parties and on consideration of the materials on record, I find substance in the contentions of the petitioner. A specific stand has been taken in paragraph-4 of the supplementary affidavit that the petitioner was not given any opportunity of fresh hearing by the successor in office of the appellate authority before passing of the impugned appellate order, after the matter was heard by the predecessor in office. It is well settled that the person who has heard the matter should pass the order. With a change of incumbent in office, a fresh notice of hearing was required to be given to the petitioner. Failure in this regard resulted in violation of natural justice which vitiates the impugned appellate order dated 18.05.2009 passed by the Collector-cum-District Magistrate, Bettiah, West Champaran (respondent no. 2).

5. The stand of the petitioner that the impugned order of cancellation of PDS license dated 24.07.2000 has been passed without a show cause notice of proposed cancellation, has also not



been controverted by the respondents. Such order of cancellation could not have been founded upon a show cause notice for suspension of the license.

6. In the above view of the matter, the impugned appellate order dated 18.05.2009 (Annexure-4) as well as the impugned order dated 24.07.2000 (Annexure-3) cancelling the PDS license of the petitioner are hereby quashed and the matter remanded to the Sub-Divisional Officer, Bettiah Sadar, Bettiah, District- West Champaran (respondent no. 3) for issuing a fresh show cause notice of proposed cancellation of the PDS license before proceeding in the matter in accordance with law.

7. The writ petition stands allowed as above.

(Vikash Jain, J)

Md. Ibrarul/BT

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	30.08.2018
Transmission Date	N.A.

