

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No. 6 of 2018

In

Civil Writ Jurisdiction Case No.231 of 2017

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Gopal Paswan, Son of Bholas Paswan, resident of Village -
Bhansi, P.S. - Garhpura, District – Begusarai.

... .. Appellant/s

Versus

1. The State of Bihar.
2. The Divisional Commissioner, Munger.
3. The District Magistrate cum Collector, Begusarai.
4. The Sub Divisional Officer Sub-Division, Bakhri, District - Begusarai.
5. The Block Supply Officer, Block Garhpura, District Begusarai.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajeev Kumar Labh, Advocate
For the Respondent/s: Mr. Alok Ranjan, AC to AAG-5

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 09-08-2018

Heard learned counsel for the appellant as well as the
State.

This intra court appeal is directed against the judgment
dated 27.11.2017 passed by the learned Single Judge of this Court
in C.W.J.C. No. 231 of 2017, which was filed for quashing the
orders dated 20.07.2012, 24.06.2013 and 26.11.2014 passed by the



original, appellate and revisional authorities. By the original order the P.D.S. Licence of the writ-petitioner bearing no. 17/09 was cancelled and the appeal and revision were also dismissed. The writ petitioner-appellant case could not find favour of the learned Single Judge also.

Short facts emanating out of the records of this case are as under:

On the basis of report of the Block Supply Officer, Garhpura, Begusarai a show cause notice was served upon the petitioner vide Annexure-4 to the writ petition. It appears from the report, which has been appended to the show cause notice, that the statements of certain persons were recorded in written and orally by the Block Supply Officer who has stated that the petitioner was selling B.P.L. food-grains without any coupon and in place of wheat only rice was distributed and that too at a higher rate. It is also stated in report that kerosene oil was also being supplied at higher rates. The petitioner filed a reply to the show cause notice on which the final order dated 20.07.2012 canceling his P.D.S. licence was passed by the Sub-Divisional Officer, Bakhri, Begusarai, who happens to be the licencing authority and the concerned competent officer to take such decision.



However, on plain reading of the aforesaid order, it appears to us that the order was passed without application of mind simply on the basis of some report submitted by the Block Supply Officer along with some statements of the beneficiaries.

We have perused the report and the allegation available on records. However, in our considered opinion, the Block Supply Officer never tried to verify complains from the concerned P.D.S. dealer itself and the report was filed. The writ-petitioner, i.e., the P.D.S. dealer filed his reply to show cause notice appending the statements of several beneficiaries duly attested by the Mukhiya and members of the Panchayat Samiti of the concerned Panchayat in his support but the Sub-Divisional Officer has disbelieved it and believed the earlier reports submitted by the Block Supply Officer and the statements of the beneficiaries recorded by him. He has disbelieved the statements of beneficiaries, Mukhiya and Members of the Panchayat Samiti considering them to be an afterthought and under impression that must have been managed but he never took a pain to call those persons who were complainants either before the Block Supply Officer or the persons whose statements were filed on behalf of the P.D.S. dealers during the course of hearing. He has completely based his order on the recommendation of the Block Supply Officer whereas he being the



licencing authority was supposed to apply his own mind and pass a reasoned order. If there is allegation that somebody is selling food-grains or the kerosene oil at a higher rate, there must be seller and purchaser also but he never tried to find out the person who were the beneficiaries. Unless there is any beneficiary of that kind it cannot be held that a person is guilty of selling the grains or kerosene oil at a higher price. Absolutely nothing of that sort has been done rather he has banked his decision merely on such report of the Block Supply Officer which was submitted without any notice to the licensee. He has not recorded any reason as to why and on what basis he has discarded the statement of the Mukhiya and other beneficiaries which were in favour of the writ-petitioner and what were the materials before him to come to a conclusion that those materials were afterthought and result of management by the P.D.S. dealer.

In the absence of anything to that extent, such finding would have to be held to be perverse and without application of mind. He has discarded the evidence led by the writ-petitioner merely on the basis of suspicion. It is not permissible at all. That cannot be approved. The appellate as well as the revisional authorities have also committed the same error and have approved



the order passed by the licencing authority which is merely based on the report of Block Supply Officer as discussed above.

Now, coming to the order passed by the learned Single Judge, it appears that finding have been recorded relying upon such views of the Sub-Divisional Officer as well as the appellate and revisional authority and has dismissed the writ petition. Learned Single Judge has also banked upon the inquiry report containing the statements of several beneficiaries making serious allegations against the petitioner of charging higher price and other irregularities but which were accepted by the Sub-Divisional Officer. However, at the cost of reitartation we would hold that mere allegation, however, be serious, cannot be approved as evidence. It is noted in the judgment impugned that the petitioner at no stage raised objection with regard to inquiry report being not in prescribed format but the question is not that. The real question is that whether that report was after verifying the facts? Whether any notice was given by the Block Supply Officer that such type of inquiry is to be held, thus, he should remain present there? It is nowhere stated in the inquiry report that it was done so. Since the inquiry report of the Block Supply Officer was merely an allegation which was required to be proved and for approving that there must have been some spot inquiry or some process adopted



by the licencing authority by calling upon those persons and making inquiry from them as to whether really it has happened or not including those beneficiaries who had given statements in favour of the writ-petitioner. Such an extreme decision of cancellation cannot be taken merely on suspicion and doubt.

It is all the time being said by the original authority, appellate authority as well as the revisional authority and even by the learned Single Judge that writ-petitioner could not prove his innocence. In our view, the charges were required to be proved against the petitioner-appellant. Then only the burden could have been shifted upon the shoulders of the P.D.S. dealer.

In the result, this appeal succeeds. The judgment dated 27.11.2017 passed by the learned Single Judge in CWJC No. 231 of 2017 as well as the orders dated 20.07.2012, 24.06.2013 and 26.11.2014 passed by the original authority, appellate authority and revisional authority as contained in Annexure-1, 2 and 3 of the writ petition as well as the judgment impugned in the appeal are quashed and set aside. The appeal and writ petition stands allowed.

The authorities are directed to immediately restore the P.D.S. licence in favour of the appellant if no third party right has been created till date. It is also noted here that the appellant has



already filed a supplementary affidavit stating that no third party right has been created till date.

(Dr. Ravi Ranjan, ACJ)

(S. Kumar, J)

Vikash/-

AFR/NAFR	AFR
CAV DATE	NA
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Transmission Date	NA

