

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14202 of 2016

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Ganesh Prasad Sah S/o Late Jagdish Prasad Sah Resident of Village - Lalapur,
P.O. - Lalapur Bhader, P.S. - Kahalgaon, District - Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Bhagalpur Division, Bhagalpur.
2. The Commissioner, Bhagalpur.
3. The District Magistrate-cum-Collector, Bhagalpur.
4. The Sub Divisional Officer, Kahalgaon, Bhagalpur.
5. The Block Supply Officer, Kahalgaon, Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. U.K. Agrawal, Sr. Advocate
		Mr. Dhananjaya Nath Tiwari, Advocate
For the Respondent/s	:	Mr. Ravi Verma, AC to GP-4

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT

Date : 03-08-2018

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

2. Petitioner seeks setting aside of order dated
18.08.2011(Annexure-3), passed by the Licensing Authority i.e.
the Sub-Divisional Officer, Kahalgaon (Respondent No. 4) by
which his PDS licence has been cancelled.

3. The appeal preferred before the District Magistrate
cum Collector, Bhagalplur being Supply Appeal No. 56/2011-12
also met the same fate and the Misc. Supply Revision No.
67/2015-16 before the learned Commissioner, Bhagalpur Division
also has been dismissed.



4. Petitioner has filed this writ application that the show cause notice dated 04.08.2011, as contained in Annexure-1, postulates only three days to file reply, which was not sufficient. He submits that the report of the Block Supply Officer, Narkatiyaganj, who had conducted the inspection, was also called by the Licensing Authority, but the said report vide letter No. 221 dated 17.08.2011 was not supplied to the petitioner, as such, the order cancelling the PDS licence of the petitioner is not sustainable in the eye of law and is fit to be set aside and, consequently, the subsequent orders passed by the appellate and the revisional authorities is also fit to be quashed.

5. However, learned counsel for the State submits that the petitioner had earlier approached this Court in C.W.J.C. No. 13946 of 2013 against the cancellation order passed by the Licensing Authority and the order passed by the Appellate Authority dated 07.06.2013 and this Court under order dated 30.09.2015 (Annexure-5) directed the petitioner to avail the remedy of revision before the Revisional Authority.

6. Considering the rival submissions of the parties, I am of the opinion that the show cause notice, which postulates only three days to submit the reply was insufficient and is in violation of the principles of natural justice as the petitioner was not given



sufficient time to reply. If the initial order is held to be bad, the subsequent orders also would have held to be bad as the petitioner was not given sufficient opportunity to file reply to the show cause, as has been held in the case of ***Smt. Phulpati Devi vs. The State of Bihar & Ors.*** since reported in ***2013(1) PLJR 718***.

7. The petitioner was not even supplied the opinion of the Block Supply Officer, Kahalgaon and the said opinion (copy of the enquiry report) and non-supply of the opinion/ enquiry report has also resulted in violation of principles of natural justice, and, thus, the decision making process stands vitiated. The similar view has been taken in the case of ***Kamakhya Narain Singh vs. The State of Bihar & Ors.*** (C.W.J.C. No. 645 of 2018) vide order dated 03.07.2018 that if the cancellation order has been passed without giving sufficient time to file reply to the show cause and without providing the copy of the enquiry report to the petitioner, such infirmity cannot be cured in appeal or revision.

8. The enquiry report having been supplied after the order passed by this Court in C.W.J.C. No. 13946 of 2013 dated 30.09.2015 at the revisional stage, which also vitiates the order cancelling the PDS licence of the petitioner passed prior to supply of enquiry report. Thus, the order dated 18.08.2011, passed by the Licensing Authority i.e. the Sub-Divisional Officer, Kahalgaon



(Respondent No. 4), the order dated 07.06.2013, passed by the District Magistrate cum Collector, Bhagalpur in Supply Appeal No. 56/2011-12 and the revisional order dated 19.05.2016, passed by the Commissioner, Bhagalpur Division in Misc. Supply Revision No. 67/2015-16 are set aside. The matter is remitted back to the Sub-Divisional Officer, Kahalgaon (Respondent No. 4) to take a fresh decision in accordance with law after giving sufficient opportunity to show cause. Supply to the petitioner in the meantime, would be restored without any delay until fresh order is passed by the Licensing Authority i.e. the Sub-Divisional Officer, Kahalgaon (Respondent No. 4).

9. This writ application is, accordingly, allowed.

(Nilu Agrawal, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.08.2018
Transmission Date	NA

