

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1505 of 2019

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Rajkumar Paswan, Gender-Male, Aged about 54 years, son of Aamo Das,
Resident of Village- Salonachak, P.S. and District- Lakhisarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection, others Department, Old Secretariat, Patna.
2. The Commissioner, Munger Division, Munger.
3. The Collector, Lakhisarai, District- Lakhisarai. Lakhisarai.
4. The Sub-Divisional Officer, Lakhisarai, District- Lakhisarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rajeev Kumar Labh, Adv.

For the Respondent/s : Mr. Alok Ranjan, AC to AAG-5

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

2 30-01-2019 Heard learned counsel for the petitioner and learned
counsel representing the State.

Petitioner in the present case is aggrieved by the order passed by the Sub-Divisional Officer, Lakhisarai, as contained in memo no.656 dated 06.11.2015 (Annexure-1), whereby the licence of the petitioner's Fair Price Shop bearing no.2/91 has been cancelled and then the said order has been affirmed by the appellate authority vide his order dated 15.10.2016, as contained in Annexure-4 to the present writ application. The petitioner, thereafter, challenged the appellate order before the revisional authority in Supply Revision No.130 of 2016, but the Commissioner, Munger Division, Munger, being the revisional



authority, has dismissed the revision application also.

Learned counsel for the petitioner, at this stage, submits that prior to passing of the impugned order the Sub-Divisional Officer had not given adequate opportunity of hearing to the petitioner as according to him the show cause notice, as contained in Annexure-2, was issued giving the petitioner only 24 hours to submit his reply. His next contention is that the copy of the enquiry report submitted by the Block Supply Officer, Lakhisarai was not made available to the petitioner and, therefore, on this ground alone the impugned order is liable to be held bad and is set aside.

On the other hand, learned counsel representing the State has drawn the attention of this Court towards copy of the letter available with Annexure-2 series which shows that vide memo no.617 dated 26.10.2015, the Sub-Divisional Officer, Lakhisarai once again called upon the petitioner to submit his reply and asked him to produce the last six months registers and cash-memos. By memo no.617 dated 26.10.2015, the Sub-Divisional Officer, Lakhisarai made it clear to the petitioner that his failure to make available the given documents shall lead to a conclusion that the petitioner has nothing to say and an ex-parte order will be passed.



It is further pointed out from Annexure-3 series that after receipt of memo no.617 dated 26.10.2015 which has been described as second show cause, the petitioner appeared before the Sub-Divisional Officer and submitted certain documents in his support. In his reply, he also stated that in absence of cash-memos of last four months he was not submitting the same.

Learned counsel for the State submits that in his reply to the show cause, the petitioner never raised any issue with regard to supply of the enquiry report rather he took a stand that no enquiry was conducted by the Block Supply Officer, Lakhisarai during the shop time. His plea was that the inspection report of the Block Supply Officer does not mention the time when the inspection was held and, therefore, the allegations made against the petitioner were not correct. These facts are mentioned in the impugned order dated 15.10.2016, as contained in Annexure-4 to the writ application.

Learned counsel thus submits that the petitioner was well aware of the inspection report and had never raised any issue with regard to non-supply of a copy of the enquiry report. It is not the case of the petitioner that he had raised this issue either before the Sub-Divisional Officer, Lakhisarai or before the appellate authority, but the same was not considered. It is



also submitted that opportunity given to the petitioner to show cause satisfies the principles of natural justice and no violation of the Rule in this regard has been pointed out by the petitioner. It is submitted that there is no provision for giving a personal hearing.

Learned counsel also points out that when the petitioner was giving an opportunity to produce the registers which are required to be maintained by a fair price shop dealer, he could not produce all the registers and even the registers which were produced were not containing the description of the consumers to whom the supplies were made. It is also pointed out that non-production of the cash-memos by the petitioner shows that he was not issuing the cash-memos and was not regularly maintaining the registers. Thus, it is submitted that the petitioner was violating the terms and conditions of the licence which were in fact violation of the order of the Hon'ble Supreme Court in Writ Petition No.196 of 2001.

Having heard learned counsel for the petitioner and learned counsel representing the State and on perusal of the records, this Court finds that the first plea taken by the learned counsel for the petitioner as regards not giving adequate opportunity of hearing is not fit to be accepted. On the face of



the memo no.617 dated 26.10.2015, which is in the nature of second show cause, it can be concluded by this Court that even though the memo no.605 dated 14.10.2015 mentions that the petitioner should submit his show cause and relevant registers with cash memos etc. within 24 hours but the fact remains that by yet another show cause the petitioner was given an opportunity to produce those documents and submit his show cause which the petitioner has in fact done vide Annexure-3 series. Thus, it cannot be said to be a case of violation of principles of natural justice by not providing adequate opportunity of hearing to the petitioner.

As regards supply of the copy of the enquiry report, this Court finds that in his reply to the show cause, as contained in Annexure-3 series, the petitioner did not request the Sub-Divisional Officer to provide him a copy of the enquiry report rather tone and tenor of his reply shows that he was fully aware of what were the allegations against him which were the subject matter of consideration before the Sub-Divisional Officer, Lakhisarai. This Court finds that the petitioner had produced the distribution and stock register of the kerosene oil and also the distribution and stock registers of PHH Scheme and Antyodaya Scheme which were looked into by the Sub-Divisional Officer.



He examined those registers and recorded a finding of fact on perusal thereon. The Sub-Divisional Officer found that the registers were not duly filled up. They did not contain the dates and description of the quantum of kerosene oil distributed to the consumers. The registers were containing two names of the beneficiaries in some of the columns and then it was also found that similar kind of thumb impressions were appearing in the registers. The Sub-Divisional Officer noticed similar lackings and irregularities in the other registers as well. The Sub-Divisional Officer has recorded his finding after going through the records. He also noticed that the petitioner had not submitted the cash-memos in the office which goes to show that he was acting in violation of the terms and conditions of the licence. The order passed by the Sub-Divisional Officer, Lakhisarai, as contained in Annexure-1 to the writ application, appears to be a well reasoned order. The findings recorded by the Sub-Divisional Officer has been upheld by the appellate as well as the revisional authority. Thus, on the face of the finding of facts recorded by the all the authorities, this Court does not find it just and proper to take any other view as this Court sitting in its writ jurisdiction would not be acting as a fact finding Court.

It is also well settled that principles of natural justice



cannot be put in a straightjacket formula. The plea which is being taken at this stage saying that the copy of the enquiry report was not made available to the petitioner will be of no avail in the given facts and circumstances of the case where this Court finds that the petitioner was well aware of the allegations made against him, he was given an opportunity to show cause and to produce all the registers and cash-memos. The registers produced by the petitioner were not found containing the description of the distributions made to the beneficiaries, several irregularities were found in maintenance of the registers and apart from that the cash-memos were not produced and the plea that copy of the enquiry report was not made available to the petitioner was never taken before the authorities concerned, this Court does not find it a fit case to interfere on the ground which is being taken by the petitioner at this stage. The enquiry report is not the basis of findings recorded by the Sub-divisional Officer. He has acted independently and has examined the records.

The writ application has thus no merit. It is dismissed accordingly.

At this stage, learned counsel for the petitioner submits that for the lacunas which were found in the registers no



show cause was issued to the petitioner.

In the opinion of this Court, this is once again a completely misconceived plea of the petitioner which is being taken at this stage. It has got no merit and is rejected accordingly.

(Rajeev Ranjan Prasad, J)

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