

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5270 of 2019

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Indal Paswan, S/o Sri Kameshwar Paswan, Resident of Village- Khojuchak,
P.s.- Sonpura, Distt.- Saharsa

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Food and Consumer Protection, Govt. of Bihar, patna
2. The Collector Saharsa
3. The Sub Divisional Officer Simri, Bakhtiyarpur, Saharsa
4. The Block Supply Officer Simri, Bakhtiyarpur, Saharsa

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. N.K. Agrawal, Sr.Adv. Mr.Dhananjaya Nath Tiwari, 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 06-11-2019 After hearing learned counsel for the petitioner as well as the State, this Court finds that the impugned order as contained in memo no.1146-2 dated 29.08.2017 issued by the Sub-Divisional Officer, Simri Bakhtiyarpur, as contained in Annexure-3 to the writ application, is fit to be set aside on the ground of violation of principles of natural justice.

By the impugned order, the licence of the petitioner under the Public Distribution Shop System has been cancelled.

Learned counsel for the petitioner submits that from a bare reading of the impugned order, it would appear that the show cause submitted by the petitioner has not at all been considered and it has been held to be unsatisfactory without



considering the submissions of the petitioner. It is further submitted that in paragraph 8 of the writ application a specific statement has been made that the copy of the inspection report of the Block Supply Officer, Simri, Bakhtiyarpur was not supplied to the petitioner with the show cause. Even though the petitioner applied for a copy of the same under Right to Information Act, the same was not supplied to the petitioner. As regards the statements made in paragraph 8 and 9 of the writ application, the respondents in their counter affidavit have accepted that those facts are matter of record, meaning thereby that the respondents have admitted the assertion of the petitioner. Learned counsel has relied upon a judgment of this Court in the case of Brahmdeo Rai Vs. The State of Bihar & Ors. reported in 2013(2) PLJR 706.

Learned counsel for the State has though admitted that the specific statements of the petitioner have not been denied in the counter affidavit, still he submits that the writ application may be dismissed on the ground of delay and laches alone. Learned counsel submits that the impugned order has been passed on 29.08.2017 whereas the petitioner moved this Court on 14.03.2019 i.e. after about one and half year. It is further submitted that the petitioner while submitting his reply to the



show cause notice did not take a plea that copy of the inspection report has not been made available to him.

Having heard learned counsel for the parties, this Court is of the considered opinion that the writ application cannot be thrown out on the ground of delay and laches alone. While delay and laches may be a ground for rejection of the writ application, such rejection has to be done only on being satisfied that the delay in moving the Court is such that it would render the petitioner disentitled for the relief prayed in the writ application. In the present case where the Court finds that the respondents have admitted the specific assertion of the petitioner that copy of the inspection report was not made available to him with the show cause notice and the Court having gone through the impugned order further finds that the reply to the show cause notice submitted by the petitioner has not at all been considered, in the opinion of this Court, the petitioner has been able to make out a case for interference with the impugned order.

It is well said that a substantial justice must prevail over the technical one. In this case the substantial justice requires that the impugned order be set aside, accordingly Annexure-3 as contained in memo no.1146-2 dated 29.08.2017



issued under the signature of the Sub-Divisional Officer, Simri Bakhtiyarpur as contained in Annexure-3 to the writ application is hereby set aside. The matter is remitted to the Sub-Divisional Officer, Simri Bakhtiyarpur (respondent no.3) to consider it afresh after providing copy of the inspection report to the petitioner and upon verification of the allegations made against him, the respondent no.3 shall pass an appropriate reasoned order within a period of 90 days from the date of receipt/production of a copy of this order. Liberty will be available to the petitioner to submit any additional response within the specified period after receipt of the inspection report.

Till a final decision is taken by the Sub-Divisional Officer, Simri Bakhtiyarpur, the licence of the petitioner and supply shall be restored.

This writ application is, thus, disposed off in the aforesaid terms.

(Rajeev Ranjan Prasad, J)

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