

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15992 of 2018

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Gobind Prasad Yadav son of late Thakur Prasad @ Thakur Prasad Yadav,
resident of Village- Bajjda, Panchayat- Bara P.S.- Fatehpur, District- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Food and Consumer Protection,
Bihar, Patna.
3. The District Magistrate, Gaya.
4. The Sub-Divisional Officer, Sadar, Gaya.
5. The Block Supply Officer, Block- Fatehpur, District- Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prashant Sinha, Advocate
For the Respondent/s : Mr. Alok Ranjan, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 22-05-2019

Heard Mr. Prashant Sinha, learned advocate for
the petitioner and Mr. Alok Ranjan, learned advocate for
the respondent/State.

2. The petitioner has challenged the order dated
12.07.2018 contained in Memo No. 961 passed by the
Sub-Divisional Officer, Sadar, Gaya whereby the license
of the petitioner to run his PDS shop has been cancelled
on the charges levelled against him.

3. A perusal of the order impugned indicates that



despite the show cause notice to the petitioner and a reminder to him for submitting his reply, no reply was sent/furnished by him. Thus, whatever material was available on record formed the basis of the Sub-Divisional Officer, Sadar, Gaya to pass the order impugned.

4. The learned advocate for the petitioner has drawn the attention of this Court to paragraph 9 of the writ petition wherein a specific statement has been made by the petitioner that after receiving the show cause notice, the petitioner had submitted his explanation in the office of the Sub-Divisional Officer, Sadar, Gaya which was received on 03.07.2018. Along with the explanation, it has been urged on behalf of the petitioner that certificate of the Mukhiya of the Gram Panchayat was also annexed which indicated that there was no complaint against the petitioner in his capacity as a PDS dealer.

5. The learned advocate for the petitioner has



also shown to this Court the show cause reply filed by him which was countersigned by some authority but there is no indication of who the recipient of the notice is.

6. The learned advocate for the State however has submitted that it would be difficult to accept the submission of the petitioner when the order of the Sub-Divisional Officer, Sadar, Gaya clearly indicates that no show cause reply was on record even after the petitioner was noticed. He further submits that in the event of such discrepant statement of facts on behalf of the parties, it would be taken as an oath against an oath and therefore, at best, the petitioner could be asked to appeal before the concerned authority, pointing out the aforesaid facts in his defence.

7. The aforesaid statement of the learned advocate for the State is not acceptable for the reason that in the counter affidavit, there is no specific denial of the statement made in paragraph 9 of the writ petition.



On the contrary, in paragraph 14 of the counter affidavit, it has been stated that the petitioner did not submit any satisfactory explanation. This therefore presupposes that a reply was filed by the petitioner for whatever it was worth.

8. Thus, it would be difficult to discard the argument of the learned advocate for the petitioner that the show cause reply was filed before the Sub-Divisional Officer, Sadar, Gaya. In the event of furnishing the exact date of which such show cause reply was filed and no rebuttal of that fact in the counter affidavit even in a vague manner, this Court is left with no option but to accept the statement of the petitioner in the present instance.

9. For such ground viz. non-consideration of the show cause reply of the petitioner, the order impugned cannot be sustained in the eyes of law and therefore, it is set aside.

10. The matter is remitted to the Sub-Divisional



Officer, Sadar, Gaya to consider the reply of the petitioner, give him a fresh hearing and then pass an order. The aforesaid exercise shall be completed within a period of three months from the date of production/receipt of a copy of this order.

11. Needless to state that this Court has not directed for resumption of supply to the petitioner in his capacity as PDS dealer. Any further sequel action shall be taken only after a proper order is passed by the Sub-Divisional Officer, Sadar, Gaya on the materials available on record.

12. With the aforesaid observation/direction, the writ petition stands disposed off.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23/05/2019

