

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10937 of 2016

Ramadhar Baitha Son of Late Jagarnath Baitha, resident of Village Post-Madhubani, Police Station- Chiraiya, District- East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
3. The District Magistrate, East Champaran, Motihari.
4. The Sub Divisional Officer, Sikrahana, Dhaka, East Champaran, Motihari.
5. The Block Supply Officer, Chiraiya, East Champaran, Motihari.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Anand Kumar Ojha
For the Respondent/s : Mr. Ajeet Kumar, SC-28

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

C.A.V. JUDGMENT

Date: 30.05.2019

The present writ petition has been filed for quashing the order dated 22.12.2014 passed by the Sub-Divisional Officer-cum-Licensing Authority i.e. the respondent no. 4 as also the order passed by the District Magistrate-cum-Appellate Authority in Case No. 50 of 2014 dated 12.09.2015, whereby and where under the license of the petitioner has been cancelled and the same has been upheld by the Appellate Authority by rejecting the appeal.

The brief facts of the case are that the petitioner is a P.D.S. Licensee and he was operating the shop to the satisfaction of all concerned, however, a show cause notice dated 06.01.2014 was issued to the petitioner herein and he was charged with violation in getting the stock certified. The petitioner had then submitted his reply stating therein that in absence of Mukhiya the stock could not be certified. Thereafter, a show cause notice dated 04.08.2014 was issued to the



petitioner pertaining to non-supply of ration in between the period September, 2012 to February, 2013 to which the petitioner had submitted a reply dated 04.08.2014, however, no decision was taken by the authorities. Finally another show cause notice dated 09.12.2014 was issued to the petitioner herein alleging therein non-distribution of ration for the period January, 2013 to May, 2013 and it was also alleged that the shop was closed on 02.12.2014. The petitioner had then filed his show cause reply, however, the Licensing Authority cancelled the license vide order contained in Memo dated 22.12.2014. The petitioner had then filed an appeal before the Appellate Authority i.e. the District Magistrate, East Champaran, Motihari, however, the same was also rejected by the impugned order dated 12.09.2015.

The learned counsel for the petitioner has submitted that both the impugned orders dated 22.12.2014 as also the one dated 12.09.2015 are bad in law as also on facts inasmuch as, as far as cancellation on the ground of the shop being closed for one day is concerned, the learned Division Bench of this Court in a judgment dated 22.06.2012 passed in CWJC No. 10213 of 2010 (Turant Lal Paswan vs. the State of Bihar & ors.), has held that closure of shop on one particular day is not such a grave



violation so as to entail cancellation of license. It has been further submitted that the allegations contained in the show cause notice dated 09.12.2014 are vague and further the Sub-Divisional Officer, Sikarhana, Dhaka/Licensing Authority in the impugned order dated 22.12.2014 has relied upon the enquiry report of the Circle Officer, which has never been supplied to the petitioner herein, hence the principles of natural justice has not been complied with. It is also the case of the petitioner that by the said show cause notice dated 09.12.2014, only three days were granted to the petitioner herein for submitting his show cause reply which in any view of the matter cannot be said to be sufficient. Lastly, it is submitted that the impugned order dated 22.12.2014 would show that the inspection was carried out at the behest of the District Magistrate, East Champaran, Motihari, therefore, there was total lack of application of mind by the Licensing Authority on the issue since the action of the Appellate Authority in getting the inspection done clearly indicates as to what was under contemplation or required to be done in such matter ultimately. Reference in this connection has been made to a judgment passed by a coordinate Bench of this Court dated 05.12.2012 passed in CWJC No. 4463 of 2011.

Per contra, the learned counsel for the respondents has



supported the impugned orders dated 22.12.2014 and 12.09.2015 and has submitted that a detailed and a reasoned order has been passed after considering the show cause reply submitted by the petitioner herein, hence the said impugned orders require no interference.

I have heard the learned counsel for the parties and having gone through the materials on record, I find that firstly the enquiry/inspection has been made in the shop of the petitioner by the Circle Officer at the behest by the District Magistrate, East Champaran, Motihari who is also the Appellate Authority, hence the Licensing Authority i.e. the Sub-Divisional Officer in question, by the impugned order dated 22.12.2014, has simply relied upon the enquiry report without any application of mind inasmuch as the Appellate Authority by getting the inspection done had clearly indicated as to what was under contemplation or required to be done in the case of the petitioner and had therefore moved with a pre-conceived notion resulting in the petitioner being denied fair opportunity to establish his innocence. This Court further finds that non-supply of the enquiry report to the petitioner herein itself renders the entire proceedings void inasmuch as the petitioner has been precluded from submitting his defence in an appropriate manner



resulting in violation of the principles of natural justice. Reference in this regard be had to a judgment of a coordinate Bench of this Court reported in 2013(2) PLJR 706 (Brahmadeo Rai vs. the State of Bihar & ors.). Lastly, the license of the petitioner could not have been cancelled on the ground of the shop of the petitioner having been found closed on one day, as has been held by the learned Division Bench of this Court in the case of Turant Lal Paswan (supra).

Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, the order dated 22.12.2014 passed by the Sub-Divisional Officer, Sikarhana, Dhaka, is unsustainable in the eyes of law, hence is quashed. Consequently, the appellate order dated 12.09.2015, passed by the District Magistrate, East Champaran, Motihari is also bound to fall and is accordingly set aside.

The writ petition stands allowed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	06.09.2018
Uploading Date	01.06.2019
Transmission Date	N/A

