

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6553 of 2018

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Manoj Kumar Gupta, S/o Mahendra Sah, Resident of Village- Harpur Balra,
P.S.- Manihari, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary, Food & Civil Supply Department,
Government of Bihar, Patna.
2. The District Magistrate, Muzaffarpur.
3. The Sub-Divisional Officer, Muzaffarpur.
4. The Block Supply Officer, Kudhani, Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shankar Kishore Shahi, Advocate

For the State : Mr. Alok Ranjan, AC to AAG-5

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH
ORAL JUDGMENT

Date : 29-05-2019

Heard learned counsel for the petitioner and learned AC
to AAG- 5 for the State.

2. The petitioner has moved the Court for the following
relief:

*“That the present writ application is being
filed for setting aside the order dated 20.04.2017
contained in Memo No. 493 passed by the Sub
Divisional Officer, Muzaffarpur by which the
License of the petitioner to carry on trade as a PDS
dealer has been cancelled.”*



3. The petitioner was a PDS dealer. On 21.08.2014, his shop was inspected and certain irregularities were found for which show cause was served on him and after considering the reply submitted by the petitioner, the Competent Authority cancelled the license of such shop. Aggrieved, the petitioner moved before the Appellate Authority and by order dated 08.12.2015, the cancellation order was upheld. The petitioner thereafter moved this Court in CWJC No. 3818 of 2016, in which by judgment dated 20.12.2016, the order against the petitioner was quashed and the matter was remanded to the Licensing Authority to pass fresh order after supply of enquiry report to the petitioner. Pursuant thereto, the authorities served another show cause along with enquiry report to which the petitioner also filed his reply and thereafter the Licensing Authority has passed the order dated 20.04.2017 by which the licence of the petitioner has been cancelled.

4. Learned counsel for the petitioner submitted that the direction of the Court to supply copy of the enquiry report was not complied with. It was further submitted that the premise of the authority is also incorrect since his shop was not under the PACS but an individual PDS shop. Learned counsel submitted that the order impugned also has not considered the reply to the show



cause filed by the petitioner. It was submitted that under similar circumstances in the case of **Brahmanand Paswan** in CWJC No. 1339 of 2018, a Bench of this Court by order dated 17.09.2018 has quashed the order with liberty to the authority to proceed afresh. Reliance was also placed on a judgment of the Court dated 27.05.2019 in CWJC No. 24739 of 2018 in the case of **Baleshwar Mahto** where also the Court, on the ground of the enquiry report not having been furnished to the petitioner, had set aside the order of cancellation and remanded the matter to the Licensing Authority for fresh consideration.

5. Learned counsel for the State submitted that the petitioner has moved the Court much belatedly i.e., after almost one year from the passing of the impugned order. It was further submitted that under Rule 32(iii) of Bihar Targeted Public Distribution System (Control) Order, 2016, there is a provision for appeal which also the petitioner has not availed and further for filing such appeal, the time limit is 30 days and in the present case, even moving the High Court after almost one year indicates gross delay and laches on the part of the petitioner on which ground alone, the writ petition should be dismissed. It was further submitted that the ground that no enquiry report was given is totally erroneous as in the notice sent to the petitioner pursuant to



the order of the High Court, remanding the matter, it is clearly stated that the enquiry report was being enclosed and it has also been taken note of in the impugned order itself. It was further submitted that even in the affidavit filed by the authorities, there is a categorical statement that the enquiry report was served on the petitioner.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present writ petition. Against the petitioner, there are serious allegations of omission and commission. Without going into the complete background, as on the last occasion, the Court had remanded the matter to the authorities on the ground that the petitioner was entitled to a copy of the enquiry report, the Court would restrict its consideration to such terms. From the notice given to the petitioner, pursuant to the remand dated 03.03.2017, it is clear that the copy of the enquiry report was served on the petitioner. Such fact gets further established from the reply filed by the petitioner on 09.03.2017, in which at internal page-3, the fact of the petitioner being aware of the report is clear where he has stated that in the enquiry report of the Block Supply Officer, statement of ten beneficiaries have been recorded. This fact could not have been known to the petitioner



if it was not enclosed with the very first show cause served on him and most importantly, he has not raised any objection with regard to non furnishing of the enquiry report in his reply, despite him referring to the notice dated 03.03.2017 in which it was specifically mentioned that copy of the enquiry report was being furnished. Further, in the writ petition itself, such ground was not taken and only later in the supplementary affidavit which was filed in July, 2018, such point has been taken and the same has also been replied by the authorities in the counter affidavit. In the present case, the Court after going to the order impugned dated 20.04.2017, finds that each and every aspect has been well considered by the Licensing Authority. Moreover, the order was passed on 20.04.2017 and the petitioner has moved the Court after almost one year of the passing of the order.

7. As far as the decisions relied upon by learned counsel for the petitioner in **Brahmanand Paswan** (*supra*) and **Baleshwar Mahto** (*supra*) are concerned, the main ground which had persuaded the Court to remand the matter was that copy of enquiry report was not supplied to the petitioners of those cases, whereas, in the present case, such ground is not available to the petitioner, as from the records and the conduct of the petitioner himself, it is proved that copy of the enquiry report had been



served on the petitioner and he was well aware of the findings before he gave his reply to the notice served by the authorities on him.

8. For reasons aforesaid, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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