

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14725 of 2018

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Arun Kumar Mishra @ Arun Mishra son of Late Ram Udar Mishra @ Udagar Mishra, resident of Village- Janipur, P.S.- Nanpur, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Department of Food and Civil Supplies, Government of Bihar, Patna.
3. The Commissioner, Tirhut Commissioner, Muzaffarpur.
4. The District Magistrate-cum- District Collector, Sitamarhi.
5. The Sub- Divisional Officer, Pupri, District- Sitamarhi.
6. The Block Supply/ Marketing Officer, Nanpur, District- Sitamarhi. null null

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Amrit Abhijat, Adv.
For the Respondent/s : Mr.Upendra Pratap Singh, AC to SC 4

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

11 10-12-2020 Heard Mr. Amrit Abhijat, learned counsel for the petitioner and Mr. Upendra Pratap Singh, learned AC to SC 4 through Video Conferencing.

2. The petitioner in this writ petition seeks quashing of the order dated 21.03.2015 passed by the Sub-Divisional Officer, Pupri, Sitamarhi as contained in memo no.91 (Annexure 7) and further to quash the order dated 22.06.2018 passed by the Collector, Sitamarhi in Supply Appeal No.156 of 2017.

3. The brief facts, relevant for disposal of the writ petition, are that one Ramanand Mandal gave an application to



the Sub-Divisional Officer, Pupri alleging therein that the petitioner Arun Kumar Mishra was committing different irregularities in distribution of foodgrains and kerosene oil from PDS shop. Having received such petition, the Sub-Divisional Officer, Pupri issued notice on 04.03.2015 as contained in memo no.65-supply calling upon the petitioner to submit his show-cause about the irregularities as alleged by Ramanand Mandal failing which the PDS shop licence of the petitioner shall be cancelled. The petitioner submitted his detailed show-cause with the stock register and distribution register. The Sub-Divisional Officer without considering the show-cause of the petitioner cancelled the licence of the petitioner by order dated 21.03.2015 on the basis of the report of the Block Supply Officer, Nanpur although the enquiry report of the Block Supply Officer, Nanpur was not given to the petitioner.

4. The petitioner moved before this court in CWJC No.18564 of 2016 against the order dated 21.03.2015 passed by the Sub-Divisional Officer, Pupri on the ground that non-consideration of show-cause filed by the petitioner amounts to violation of principles of natural justice and on that ground the order should be quashed but this court by order dated 03.04.2017 disposed of the writ petition of the petitioner with a



liberty to the petitioner to file a statutory appeal before the Collector. Thereafter the petitioner submitted his appeal being Supply Appeal No.156 of 2017 and the Collector, Sitamarhi by order dated 22.06.2018 dismissed the appeal without considering the grounds taken by the petitioner in memo of appeal and non-consideration of show-cause. The Collector, Sitamarhi again relied on the same report of the Block Supply Officer, Nanpur which is nothing but the opinion of the Block Supply Officer, Nanpur, although who is said to have held the enquiry but did not examine any consumers of the shop of the petitioner. The petitioner again moved this court in the present writ petition.

5. Learned counsel for the petitioner submits that from perusal of the notice (Annexure 3) calling upon the petitioner to show-cause, it would appear that only Ramanand Mandal made allegation of irregularities in distribution of foodgrains but from perusal of the order of the Sub-Divisional Officer, it would appear that the Sub-Divisional Officer in his order held that Ramanand Mandal and others made allegation of irregularities committed by the petitioner in distribution of foodgrains and kerosene oil. The Sub-Divisional Officer did not gave descriptions of other consumers making any allegation. It



is further submitted that during course of hearing on the show-cause of the petitioner, the Sub-Divisional Officer, who was exercising quasi judicial authority called a report from the Block Supply Officer, Nanpur and the Block Supply Officer, Nanpur without holding any enquiry or taking the statements of any consumers of the shop of the petitioner submitted a report. The report is nothing but opinion of the Block Supply Officer and the same is based on no material but the Sub-Divisional Officer cancelled the licence of the petitioner. The appellate authority also primarily relying on the same report of the Block Supply Officer, Nanpur dismissed the appeal without considering the grounds taken in the memo of appeal and non-consideration of show-cause, which amounts to violation of principles of natural justice.

6. Mr. Upendra Pratap Singh, learned AC to SC 4 submits that there is a statutory provision of revision and the petitioner without exhausting efficacious remedy of revision filed this writ petition.

7. Having considered the submissions of both sides and on perusal of the orders, I find that the Sub-Divisional Officer, Pupri in his notice issued to the petitioner stated that Ramanand Mandal made allegation of committing irregularities



in distribution of foodgrains and kerosene oil. The petitioner gave his detailed show-cause and also submitted the stock register and the distribution register but from perusal of the order of the Sub-Divisional Officer, it transpires that the Sub-Divisional Officer recorded the finding that Ramanand Mandal and others had made allegation of committing irregularities. It further transpires that the Sub-Divisional Officer based his order on the basis of enquiry report of the Block Supply Officer, Nanpur. The quasi judicial authority while exercising the power must hear the aggrieved and consider the show-cause. The order should reflect that he considered the show-cause in true perspective. The copy of the report submitted by the Block Supply Officer was never served on the petitioner and, therefore, the finding recorded on the basis of such report is vitiated. The order also does not reflect that the Sub-Divisional Officer at all considered the show-cause of the petitioner and recorded a finding to this effect. Therefore, the order is illegal and not sustainable. The Collector, Sitamarhi has also committed the same error and illegality. Thus, I find that the order dated 21.03.2015 passed by the Sub-Divisional Officer, Pupri, Sitamarhi (Annexure 7) cancelling the P.D.S. licence of the petitioner and order dated 22.06.2018 passed by the



Collector, Sitamarhi (Annexure 10) are erroneous, illegal and not sustainable. Accordingly, they are quashed. In the result, this writ petition is allowed.

8. The matter is remitted to the Sub-Divisional Officer, Pupri, Sitamarhi to hear the petitioner afresh and pass order in accordance with law within four months from the date of receipt of this order.

(Prabhat Kumar Jha, J)

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