

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16753 of 2018

=====

Rajendra Baitha Son of Rameshwar Baitha, Resident of Village- Thumma,
Panchayat- Thumma, Block and P.S.- Runnisaidpur, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Food and Consumer Protection Department, Bihar, Patna
2. The District Magistrate Sitamarhi, District- Sitamarhi.
3. That District Supply Officer, Sitamarhi.
4. The Sub Divisional Officer cum Licensing Authority Sitamarhi Sadar, District- Sitamarhi.
5. The Block Supply Officer, Block- Runnisaidpur, District- Sitamarhi.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Anil Chandra
For the Respondent/s : Mr.Arvind Ujjwal - Sc4

=====

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 14-02-2020

1. The present writ petition has been filed for quashing the order dated 21.10.2016, passed by the Sub Divisional Officer, Sitamarhi Sadar, whereby and whereunder the licence of the Public Distribution Shop of the petitioner bearing licence no. 77 of 2008 has been cancelled as also for quashing the order dated 31.07.2018, passed by the learned District Magistrate, Sitamarhi in Supply Appeal case no. 103 of 2016.

2. The short point raised by the petitioner for assailing the aforesaid impugned orders is that the inquiry report has not



been supplied to the petitioner herein, hence he was never confronted with the materials available against him in the inquiry report, thus no opportunity was granted to the petitioner on the said count as also for adducing evidence with regard to the materials found against the petitioner in the inquiry report, resulting in violation of the Principles of Natural Justice.

3. In this connection, the learned counsel for the petitioner has relied upon a judgment reported in **2013 (2) PLJR 706 (Brahmdeo Rai v. The State of Bihar and others)**, paragraphs no. 4 to 6 whereof, are reproduced hereinbelow:-

“ 4. Though a counter affidavit has been filed on behalf of the State and copy of the enquiry report as well as the statements of the complainants/ consumers have been appended as Annexure-A series but so far as the allegation of the petitioner to the extent that those were not supplied to him have been evaded to be answered. Only submission to that regard, which stands recorded in the paragraph no. 11 of the counter affidavit, is that the petitioner should have asked for any paper or document if that was felt necessary by him for giving a proper reply.

5. In my considered opinion, if any action or an order of the authority is going to visit some civil consequence upon a party or a person, a show cause notice and consideration of the reply thereafter would be mandatory. Show



cause notice cannot be considered to be a simple notice describing the charges only as the basis for levelling it should also be known to the petitioner so that a proper reply to the notice could be furnished by him and be ultimately considered by the licensing authority before passing a final order. Non-supply of the copy of the enquiry report and the statements of the charges to the petitioner would lead to a situation when it can safely be construed that the principle of natural justice has been violated. So far the second issue is concerned though a specific averment has been made in the reply to the show cause notice (Annexure-4) that the Repura Village consumers have been detached from the shop of the petitioner and were attached with some other PDS dealers, thus, the charges to that extent cannot be levelled against the petitioner, that has not been considered by the licensing authority while passing the order as no reason has been recorded for rejecting such plea taken by the petitioner.

6. Thus, on both counts the impugned order, as contained in Annexure-5, cannot be sustained in its present form and, accordingly, the same is quashed and set aside. However, the matter is remitted back to the licensing authority for fresh consideration in accordance with law by recording a speaking order in terms of the observations made in the present order. Since a report of the enquiry as well as the statements of the complainants have already been appended with the counter affidavit, no fresh show cause notice along with the



documents is required to be issued upon the petitioner. The petitioner would be required to appear before the licensing authority with his fresh reply to the show cause notice which should be considered and, thereafter, a final decision should be taken by the licensing authority within eight weeks from the date of filing of such reply. It is made clear that this order would not amount to automatic resumption of supplies to the petitioner as the same would depend upon the final order which would be taken by the licensing authority. However, if no order is passed within the time granted then the petitioner would be entitled for resumption of supplies also.”

4. The learned counsel for the State could not dispute the fact that the inquiry report was not supplied to the petitioner.

5. Having regard to the facts and circumstances of the case, considering the submissions made by the learned counsel for the petitioner as also considering the judgment rendered by a co-ordinate Bench of this Court in the case of ***Brahmdeo Rai (supra)***, I deem it fit and appropriate to allow the present writ petition and quash the order dated 21.10.2016, passed by the Sub Divisional Officer, Sitamarhi Sadar as also the order dated 31.07.2018, passed by the learned District Magistrate, Sitamarhi.

It is needless to state that the S.D.O., Sitamarhi,



Sadar would be at liberty to take fresh steps in accordance with law, after serving a copy of the inquiry report upon the petitioner and granting him an opportunity to file appropriate objection to the same.

6. The present writ petition stands disposed off.

(Mohit Kumar Shah, J)

rinkee/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.02.2020
Transmission Date	NA

