

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12410 of 2019

=====

Binod Kumar Singh S/o Rajeshwar Singh Resident of Village- Kurwatand,
P.S.- Khaira, District- Jamui.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Patna.
2. The District Magistrate Jamui.
3. The Sub Divisional Officer Jamui.
4. The Block Development Officer Khaira, Jamui.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Anujit Sinha, Advocate
For the Respondent/s : Mr. S.Raza Ahmad (AG 5)

=====

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 14-01-2020

Heard the learned counsel for the parties.

A supplementary affidavit and the counter affidavit on behalf of the parties has been filed during the course of argument.

Let these affidavits be taken on record.

The petitioner has challenged the order dated 28.09.2018 passed by the Sub-Divisional Officer, Jamui whereby the license of the petitioner to run the Public Distribution Shop has been cancelled as well as the order dated 30.04.2019 passed by the District Magistrate, Jamui whereby the order passed by the SDO, cancelling the license of the petitioner, has been affirmed and upheld.

It has been submitted on behalf of the petitioner that the show cause notice served upon him did not include the inquiry report and the names of the complaining



customers were also not provided to the petitioner. The further objection of the petitioner is that a very short time was given to him to reply to the show cause notice. Notwithstanding the aforesaid constraints, the petitioner furnished his reply, taking reference of such consumers who had sworn affidavits that they were actually being provided with the essential items in time and on fair price.

From the records, it appears that the SDO on consideration of the reply preferred by the petitioner, came to the conclusion that out of nine customers, four have given favourable report in favour of the petitioner whereas five have not and, therefore applying the principle of preponderance of evidence, cancelled the license of the petitioner.

All the grounds which were raised by the petitioner before the licensing authority were urged before the appellate authority also *viz.* the District Magistrate, Jamui also, who on the sole ground that there could be a possibility of the petitioner straightening the records by seeking a favourable report from such customers, upheld the order of the licensing authority/SDO, Jamui.

It has been argued on behalf of the petitioner that both the authorities did not take into account that the show cause notice was highly perfunctory; it did not list the name of the complaining consumers, the principle adopted in sifting/winnowing the complaints against the petitioner



was faulty and both the authorities did not take into account that the inspection report was not supplied to the petitioner which actually disclosed complete absence of any stock which could have led to the only presumption that till the new supply for the next month, the entire supplied material under the controlled system was distributed to the customers.

Both the orders therefore, it has been argued, are not fit to be sustained in the eyes of law. It has also been stressed upon by the learned counsel for the petitioner that the appellate authority had to consider the aforesaid anomalies as also the entire procedure adopted by the SDO in dealing with such complaints and the explanation of the petitioner with respect to each and every complaint. Not doing so has vitiated both the orders.

From the perusal of the orders impugned, it appears that a peculiar principle has been adopted by the SDO in counting the number of people who have spoken uncharitably about the petitioner. The petitioner contends by way of supplementary affidavit that majority of the tagged customers do not have any complaint against the petitioner. This could very well have been tested, had the licensing as well as the appellate authority shown more alacrity of mind.

The orders appear to be mechanical though some semblance of reason has been given in both the orders.



Since the petitioner is not asking for any resumption of supply of the food items but only wants that he be handed over a fair deal by looking at the complaints in a proper manner and considering his explanation in the correct perspective, this Court is satisfied that the matter requires a relook by the SDO, Jamui.

Both the orders viz. the order dated 28.09.2018 and the order dated 30.04.2019 are set aside.

The matter is remitted to the SDO, Jamui to write out a fresh order in accordance with law. Needless to state that before passing any order, a fresh opportunity shall be provided to the petitioner by supplying him the copy of the inquiry report and the explanation of the petitioner be considered in correct perspective. The entire exercise be completed within a period of sixty days of the receipt/production of a copy of this order.

With the aforesaid direction/observation, the writ petition stands allowed and disposed of in terms what has been stated.

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.01.2020
Transmission Date	

