

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18548 of 2018

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Kamdev Singh S/o Munni Lal Singh, Resident of Village- Kurwan, P.S.- Goh,
District- Aurangabad.

... .. Petitioner

Versus

1. The State Of Bihar through Secretary, Food & Consumer Protection Department, Old Secretariat, Patna.
2. The Collector, Aurangabad.
3. The Sub-Divisional Officer, Daudnagar.
4. The Block Supply Officer, Goh.

... .. Respondents

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Appearance :

For the Petitioner : Mr.Vijay Anand
For the Respondents : Mr.S. Raza Ahmad- Aag5

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

5 13-02-2020 The present writ petition has been filed for quashing the order dated 16.08.2018, passed by the Collector, Aurangabad in Supply Appeal Case No. 44 of 2017 as also the order dated 06.07.2017, passed by the S.D.O., Daudnagar, whereby and whereunder the licence granted to the petitioner for carrying out the business of PDS shop has been cancelled and the same has been affirmed by the appellate authority.

The brief facts of the case are that the petitioner was running a PDS shop and an inspection was conducted in the shop by the Block Supply Officer, Goh on 14.06.2017 at 9:00 am and various irregularities were found, whereupon a show cause notice dated 16.06.2017 was issued to the petitioner by the



Sub Divisional Officer, Daudnagar. It appears that after receipt of show cause reply from the petitioner, the Sub Divisional Officer, Daudnagar passed the impugned order dated 06.09.2017, cancelling the licence of the PDS shop of the petitioner. The petitioner is stated to have then challenged the said order dated 06.09.2017 by filing an appeal bearing PDS Appeal case No. 44 of 2017, before the Court of District Magistrate-cum-Collector, Aurangabad, however, the said appeal was also dismissed by a detailed order dated 04.08.2018.

The learned counsel for the petitioner has raised a legal issue for consideration to the effect that though the show cause notice mentions about submission of inquiry report by the Block Supply Officer, Goh, however the same has not been supplied to the petitioner herein, resulting in non-compliance of the Principles of Natural Justice, specially since the petitioner was not made aware about the contents of the inquiry report so that he could put forth his wholesome defence, hence it is submitted that the orders impugned are illegal and fit to be set aside. In this connection, the learned counsel for the petitioner has relied upon a judgment reported in **2013 (1) 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.”



Per contra, the learned counsel for the respondents has submitted that the order passed by the Collector, Aurangabad is well reasoned and requires no interference. It is further submitted that the petitioner has got remedy of filing revision petition against the order passed in appeal by the Collector, Aurangabad, however, it could not be disputed that a copy of the inquiry report has not been supplied to the petitioner herein.

Having regard to the facts and circumstances of the case, considering the submissions made by the learned counsel for the parties and taking into account the decision rendered by a co-ordinate Bench of this Court in the case of ***Brahmdeo Rai (supra)***, I deem it fit and proper to allow the present writ petition and quash the impugned order dated 06.09.2017, passed by the S.D.O., Daudnagar as also the order dated 16.08.2018, passed by the Collector, Aurangabad in Supply Appeal case No. 44 of 2017, however, with liberty to the S.D.O. Daudnagar to proceed afresh in the matter in accordance with law, after supplying a copy of the inquiry report to the petitioner herein.

(Mohit Kumar Shah, J)

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