

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5953 of 2020

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Surat Lal Sardar Son of Late Agam Lal Sardar Resident of Village- Jhitkiyahi,
Ward No.15, P.O.- Pakri, District- Supaul.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Food and Civil Supplies, Government of Bihar, Patna.
2. The Principal Secretary, Department of Food and Civil Supplies, Government of Bihar, Patna.
3. The District Officer-cum-Magistrate, Supaul.
4. The Sub-Divisional Officer, Supaul, District- Supaul.
5. The Block Supply Officer, Pipra, District- Supaul.

... .. Respondents

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Appearance :

For the Petitioner : Mr.Amrit Abhijat
For the Respondent State: Mr. S. Raza Ahmad (Aag5)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

4 11-08-2021 The petitioner has put to challenge an order dated 22.10.2018 passed by the Sub-Divisional Officer, Supaul, whereby the petitioner's licence to run a P.D.S. shop has been cancelled. The petitioner had preferred appeal against the said order, which also came to be dismissed by an order dated 14.11.2019 passed in Civil Supply Appeal No. 08/2019, and is under challenge in the present writ application.

Mr. Amrit Abhijat, learned counsel appearing on behalf of the petitioner has made two fold submissions. He has submitted that prior to passing of the impugned order, a notice was issued to the petitioner apparently based on an inspection



conducted by the Sub Divisional Officer-cum-Licensing Authority. The Sub-Divisional Officer had found the P.D.S. shop closed and the price and stock display board not put at the proper place outside the shop. There was no evidence of existence of P.D.S. shop at the place. Further, upon enquiry from the beneficiaries, it was found by the licensing authority that the P.D.S. dealer was not supplying food grains and kerosene oil according to their entitlement. There are other irregularities also, which the licensing authority is said to have detected on meeting the beneficiaries, which had been mentioned in the show-cause notice.

With reference to the irregularities mentioned in the said notice, based on the information received by the licensing authority from various persons/beneficiaries, learned counsel for the petitioner has submitted that the same is vague and does not at all refer to as to which beneficiary made the complain of the nature as recorded in the said notice. He has accordingly submitted that on the basis of vague notice, the petitioner was asked to reply. The petitioner did reply to the said show cause notice, which was rejected and a second show cause notice was issued on 05.10.2018 asking the petitioner to show cause as to why the petitioner's licence be not cancelled.



Learned counsel for the petitioner, at this stage, has submitted that the Sub-Divisional Officer, Supaul, has not recorded in his letter issued vide Memo No. 1630-2 dated 05.10.2018 as to why the petitioner's explanation was not acceptable. He has further submitted that the petitioner submitted his reply to the said notice dated 05.10.2018, whereafter the licensing authority passed a non-speaking order dated 22.10.2018. Referring to the order of the appellate authority, learned counsel for the petitioner contends that the appellate authority has failed to take into account the plea that the licensing authority had not given the reasons why the petitioner's explanation were not acceptable to him. He has further submitted that no enquiry report was served upon the petitioner before the action for cancellation of licence was taken.

Learned counsel for the State of Bihar, on the other hand, has submitted that copy of enquiry report was not required to be supplied to the petitioner in view of the fact that the inspection was done by the licensing authority himself and based on the facts, which he found during the course of inspection, the petitioner was put to show cause notice. He has further submitted that the petitioner did not dispute in his reply



to the notice that his shop was closed on the date of inspection and further that the price and stock display board was not placed at appropriate place. Therefore, the finding recorded by the licensing authority that the petitioner violated the terms of licence and various provisions under the Bihar Targetted P.D.S. (Control) Order, 2016, cannot be said to be unsustainable, he contends. He has submitted that there has been no violation of principles of natural justice.

Be that as it may, it is evident from the second show-cause notice, whereby the petitioner's response to the first show cause notice issued by the licensing authority was rejected that the same does not disclose the reasons why the petitioner's explanation was not acceptable to the licensing authority.

In the Court's opinion, this is one of the requirements to comply with the principles of natural justice that an authority exercising *quasi* judicial function must record in his order, reasons why the explanation given by a person is not acceptable to him. Secondly, learned counsel for the petitioner appears to be correct in his submission that there were other irregularities alleged in the first show cause notice, which do not disclose the materials which were the basis for such allegation. In respect of the said irregularities also, the petitioner's expatiation was



rejected by the licensing authority as is evident from the show cause notice issued on 05.10.2018.

In the aforesaid circumstance, in my opinion, the order of the licensing authority cannot be sustained. The requirement of recording reasons while rejecting petitioner's explanation before issuance of second show cause notice has not been met with at any stage even at the appellate stage. In such circumstance, the appellate order is also unsustainable.

Accordingly, the impugned order dated 22.10.2018 and the order dated 14.11.2019 passed in Civil Supply Appeal No. 08/2019 are set aside.

The matter is remanded back to the licensing authority to pass an order afresh on the petitioner's explanation submitted pursuant to the show cause notice issued vide letter dated 18.08.2018. The licensing authority shall be at liberty to confine its finding to either of the irregularities pointed out in the said letter dated 18.08.2018 before issuing second show cause notice, if, according to the licensing authority, other irregularities cannot be established at this stage. The licensing authority shall be at liberty to proceed from that stage and pass appropriate order afresh in accordance with law.

The entire exercise must be completed within a period



of three months from the date of receipt/production of a copy of
this order.

This writ application is accordingly allowed with the
aforesaid direction and observations.

(Chakradhari Sharan Singh, J)

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