

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2387 of 2023

Sushil Kumar Son of Ram Janam Singh, Resident of Village- Janakdhari Lal Road (Near Pani Tanki), Post Office and Police Station- Danapur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Food, Civil Supplies and Consumer Protection, Old Secretariat, Patna-15.
2. The Divisional Commissioner, Patna Division, Patna.
3. The Collector cum District Magistrate, Patna
4. The Sub Divisional Officer cum Licensing Officer, Danapur, Patna.
5. The Assistant District Supply Officer, Danapur, Patna
6. The Block Supply Officer, Danapur, Patna

... Respondent/s

Appearance :

For the Petitioner/s : Mr. Suresh Prasad Bhakta, Adv.,
Mr. Nand Kishore Prasad, Adv.
For the State : Mr. U.P. Singh, AC to SC-4

CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

2 10-04-2023 1. The petitioner has challenged the orders passed by
the S.D.O., whereby his licence was cancelled vide order dated
18.06.2016. He also challenges the order passed by the appellate
authority dated 12.10.2018 and the order dated 22.09.2022
passed by the Divisional Commissioner, whereby his revision
was also rejected.

2. Learned counsel for the petitioner submits that the petitioner was intimated about an inspection being conducted of his P.D.S. licence shop on 07.06.2016. However, as the petitioner had suffered a severe stomachache, he was admitted



in the hospital on 07.07.2016 and, therefore, the shop remained closed on the said date. The inspection was conducted on the same date and, as the shop was closed, the respondents proceeded to issue a show cause and thereafter, in spite of the petitioner having filed his reply pointing out about his inability to open the shop on the said date on account of illness and having placed on record along with reply medical documents, the respondents proceeded to cancel the licence vide its order dated 18th June, 2016. The petitioner approached this Court by filing a writ petition bearing C.W.J.C. No. 12067 of 2016, wherein this Court passed an order allowing the petitioner to withdraw the writ petition with liberty to file appeal before the appellate authority. He preferred an appeal before the appellate authority, which was dismissed by the concerned Collector on 12.10.2018 on the presumption that the petitioner was making a mere excuse of illness.

3. It is submitted that the District Magistrate failed to take notice of the documents annexed with the reply. The petitioner, therefore, preferred another writ petition before this Court being C.W.J.C. No. 2855 of 2019, which was again dismissed with liberty to the petitioner to file a revision petition before the Divisional Commissioner for redressal of grievance



vide order dated 11th June, 2019.

4. The petitioner preferred revision petition before the Divisional Commissioner on 22.09.2022, the same was again rejected without application of mind and without considering the representation treating the same to be unsatisfactory.

5. Learned counsel submits that the documents filed along with the representation have not been found to be forged by the authorities and they have failed to take notice of the medical documents which he had filed to prove that on 7th June, 2016 he was unable to open the shop.

6. In 2014 (13) SCC 166 (Chhel Singh vs. MGB Gramin Bank, Pali & Ors.) Supreme Court has held as under:-

“12. From a plain reading of the charges we find that the main allegation is absence from duty from 11-12-1989 to 24-10-1990 (approximately 10½ months), for which no prior permission was obtained from the competent authority. In his reply, the appellant has taken the plea that he was seriously ill between 11-12-1989 and 24-10-1990, which was beyond his control; he never intended to contravene any of the provisions of the service regulations. He submitted the



copies of medical certificates issued by doctors in support of his claim after rejoining the post. The medical reports were submitted after about 24 days. There was no allegation that the appellant's unauthorised absence from duty was wilful and deliberate. The inquiry officer has also not held that the appellant's absence from duty was wilful and deliberate. It is neither a case of the disciplinary authority nor the inquiry officer that the medical reports submitted by the appellant were forged or fabricated or obtained for any consideration though he was not ill during the said period. In absence of such evidence and finding, it was not open to the inquiry officer or the disciplinary authority to disbelieve the medical certificates issued by the doctors without any valid reason and on the ground of 24 days' delay."

7. Keeping in view above, this Court finds that the medical documents reflecting the petitioner's illness were required to be considered by the authorities. The same could not have been ignored in spite of directions issued by this Court to



examine the appeal and revision on merits. This Court finds that the authorities have simply relied upon what has been urged by the respondent Department and holding that the petitioner has made a mere excuse of not opening the shop, they have proceeded and uphold the order of cancellation of licence dated 18th June, 2016.

8. In the opinion of this Court, merely on account of closure of a shop on a particular date, cannot invite cancellation of licence. It is to be noticed that granting of a P.D.S. licence could not be treated in the ordinary sense to be similar to any other licence. Once a licence is granted, it is a means of livelihood not only for the petitioner but his entire family. In such circumstances, due caution and care should be taken by the authorities before cancelling a licence and apart from giving fair opportunity of hearing to the concerned licence holder in term of Rule 27, it is also necessary that a copy of the enquiry report should be provided and, if the same is contested, then an opportunity to cross-examine the complainant should also be provided by the concerned authority to the allottee / licensee.

9. While observing above, in the present case this Court finds that it is a case of complete non-application of mind. The petitioner, admittedly, was unable to open the shop on



account of his illness. The documents annexed along with his representation have not been found to be forged.

10. In view thereof, the fact of his illness cannot be doubted and cannot be said to be an excuse. The reasons coming forward for rejecting the representation as well as rejecting of appeal and revision petition are found to be wholly misconceived and suffers from non-application of mind.

11. Accordingly, writ petition is allowed.

12. The orders impugned are quashed. The licence shall be restored to the petitioner and he shall be allowed to continue his P.D.S. shop.

(Sanjeev Prakash Sharma, J)

Pravinkumar/-

Item No. 27

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