

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17670 of 2019

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Vidyanand Ray Son of Chandrashekhar Ray, Resident of Village- Mirampur,
P.S. Raghapur, District- Vaishali.

... .. 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, Vaishali at Hajipur.
3. The Sub Divisional Officer, Hajipur.
4. The Block Development Officer, Hajipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vijay Anand, Advocate

For the Respondent/s : Mr. Anisul Haque, AC to AAG-5

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL ORDER

3 28-02-2023 Heard Mr. Vijay Anand, learned counsel appearing on behalf of the petitioner and Mr. Anisul Haque, learned AC to learned AAG-5 for the State.

2. Learned counsel appearing on behalf of the petitioner submitted that although show cause was issued to the petitioner vide memo no. 615 dated 31.07.2018 and in compliance of the said show cause, the petitioner could not file reply. The petitioner is aggrieved by the second show cause dated 02.01.2018 contained in memo no. 02, however signed on 02.01.2019 in which only three days time was given to file his



reply to the show cause. He further submitted that he is ready to file reply to the show cause but the authority had denied to accept the same.

3. Learned counsel appearing on behalf of the respondent submitted that the petitioner was served show cause on 31.07.2018 and when no reply was received on behalf of the petitioner, a reminder was sent to him contained in memo no. 2 dated 02.01.2018, however signed on 02.01.2019 and the subject of the reminder dated 02.01.2018 was with respect to the show cause contained in memo no. 615 dated 31.07.2018. In this view of the fact, the petitioner has deliberately not filed his show cause and the time which was granted to him was further extended for a period of three days but the petitioner till date has failed to file his reply to the show cause.

4. Having heard the respective parties and the materials on records, it is admitted that a show cause was issued to the petitioner vide memo no. 615 dated 31.07.2018 and after giving sufficient opportunity to the petitioner from the issuance of the show cause dated 31.07.2018 a reminder was issued to the petitioner vide Memo No. 2 dated 02.01.2018 and signed on 02.01.2019 in which petitioner was given three days time to file his reply.



5. Provision of Rule 27 of Bihar Targeted Public Distribution System (Control) Order, 2016 is being reproduced hereinafter:

27. Cancellation of License. - (i) *If a licensee violates any provision of this Order or fails to comply duties and responsibilities assigned to the license, his license shall be cancelled by the licensing authority by a written order, and such a cancellation of license shall not affect other actions initiated/initiable under the Essential Commodity Act, 1955 (Central Act 10 of 1955).*

(ii) *No order of cancellation of a license shall be made until the licensee has been given sufficient opportunity to state his case against the proposal of cancellation of his license.*

(iii) *The cases of violation of the provisions of this Order shall be disposed of within two months, as far as possible, after coming in cognizance as for.*

6. Sub-Rule (ii) of Rule 27 states that no order of cancellation of a license shall be made until the licensee has been given sufficient opportunity to state his case against the proposal of cancellation of his license.

7. Apparently, in the present case though first notice was issued to the petitioner on 31.07.2018 as contained in Memo No. 615 and a reminder was sent to the petitioner after nearly five months as contained in Memo No. 2 dated 02.01.2018, however signed on 02.01.2019 by the Sub-Divisional Officer cum Licensing Authority. However, the petitioner has not filed his show cause and has approached this



Court on the basis of the show cause notice contained in Memo No. 2 dated 02.01.2018 and signed by the Sub-Divisional Officer on 02.01.2019. The manner in which the respondent no.3 – Sub-Divisional Officer cum Licensing Authority, Hajipur has proceeded seems to be not only without application of mind but vested with interest to revive the claim of the petitioner by issuing a fresh notice on 02.01.2019 which was left pending in his office since 02.01.2018, the date on which the notice was drawn.

8. This Court has no alternative than to refer the matter before the District Magistrate who also holds the power of appellate authority under the Act for taking necessary disciplinary action against the concerned Sub-Divisional Officer – respondent no.3 who was posted at the relevant point of time or he may refer the matter, in case he finds it proper, to the Additional Chief Secretary, Food and Consumer Protection Department, Government of Bihar, Patna.

9. The District Magistrate, Vaishali – respondent no.2 considering the facts of the case and the manner in which the Sub-Divisional Officer – respondent no.3 has proceeded in the present case is directed to pass appropriate order without being vexatious and prejudiced against the petitioner within a period



of three weeks.

10. Accordingly, the present writ petition is disposed
of.

(Purnendu Singh, J)

Niraj/Nilmani

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