

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19778 of 2019

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Rajeev Kumar @ Rajeev Ray, Son of Ghandhi Ray, Resident of Village-
Terahrasia, P.S.- Ganga Bridge, District- Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection Department, Old Secretariat, Patna.
2. The District Magistrate, Vaishali, District- Vaishali.
3. The Sub-Divisional Officer, Hajipur, District- Vaishali.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Rajeev Kumar Labh, Advocate
For the Respondent/s	:	Mr.Arvind Ujjwal, SC-4
		Mr. Upendra Pratap Singh, AC to SC-4

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

7 01-05-2023 Pursuant to the order dated 28.02.2023, the erstwhile

S.D.O., Hajipur, Vaishali, the present S.D.O., Hajipur, Vaishali

and the Assistant Controller, Weights and Measurement,

Hajipur, Vaishali are present in person.

This Court has heard learned counsel for the petitioner

and learned counsel for the State.

Petitioner in the present case is seeking the following

reliefs:-

“A. A Certiorari for quashing and setting aside the
order passed by the Sub-Divisional Officer, Hajipur
and issued vide Memo No.296 dated 19.06.2019
whereby and whereunder license of the petitioner’s
Fair Price Shop has been cancelled with immediate
effect contained in (**Annexure-1**).



B. A mandamus commanding the Respondents to restore the petitioner's license as before and to make allotment for the petitioner's shop.

C. Any other relief or reliefs for which petitioner may be found entitled in the fact and circumstances of the present case may be granted to him."

Brief facts of the case

The petitioner happened to be a public distribution shop dealer who carried on his business pursuant to the license granted to him under the Bihar Targeted Public Distribution System (Control) Order, 2016. He was served with a show cause by the licensing authority vide memo no.710 dated 29.08.2018 vide Annexure- '2' to the writ application. The show cause was served pursuant to an inspection carried out in the premises of the shop on 29.08.2018 during which several irregularities were found in the shop.

The petitioner submitted his reply to the show cause which was examined but on not being satisfied with the reply of the petitioner, the licensing authority cancelled the license of the petitioner.

Submissions on behalf of the petitioner

Learned counsel for the petitioner has assailed the impugned order on the grounds inter-alia that the inspection was though conducted by the competent authority i.e. the S.D.O. but



the S.D.O. had gone in the shop with his complete team consisting several other officers who were not authorized to participate in course of inspection. Learned counsel further submits that the inspection was carried out even as there was no complaint against the shop of the petitioner.

Submissions on behalf of the State

Contesting the submissions of learned counsel for petitioner, Mr. Arvind Ujjwal, learned SC-4 submits that the petitioner has an alternative statutory remedy of appeal against the impugned order. Instead of availing the statutory remedy, he has moved this Court directly under Article 226 of the Constitution of India. It is further submitted that it is not the case of the petitioner that the impugned order suffers from violation of principles of natural justice. The petitioner himself accepts in the writ application that he was served with a show cause and was given an opportunity to submit his reply.

Learned counsel for the State submits that undoubtedly the S.D.O. is competent to conduct an inspection and whenever he visits a public distribution shop in connection with inspection, his subordinate officers are likely to be present with him or can accompany him. This, according to learned counsel for the State, cannot be a ground of objection.



Learned counsel further submits that the contention of learned counsel for the petitioner that inspection was conducted without there being any complaint is also misconceived. It is submitted that the departmental instructions which has been brought on record by way of Annexure- 'A' to the counter affidavit clearly mandates that inspection be carried out at least once in every three months, therefore, existence of a complaint is not a condition precedent for going on inspection.

Consideration

Having heard learned counsel for the petitioner and learned counsel for the State as also on perusal of the records, this Court finds substance in the submissions of learned counsel for the State. In this case, the impugned order has been passed by the competent authority after giving an opportunity to the petitioner to defend himself. The reply of the petitioner was considered whereafter the impugned order has been passed. The petitioner has a statutory remedy of appeal against the impugned order which he has not availed. This Court has no reason to entertain this writ application as the petitioner has equally efficacious alternative remedy available.

This writ application is, therefore, disposed of with liberty to the petitioner to seek his remedy, if so advised, in the



statutory appeal before the competent authority. If any question of limitation will arise before the appellate authority, the same will be considered keeping in view that the petitioner had moved this Court and was contesting the issue by filing this writ application under some bonafide beliefs.

This Court expects that in case an appeal is filed within a period of thirty (30) days from today, the appellate authority shall consider the same on its own merit.

The personal appearance of the officers stands dispensed with.

(Rajeev Ranjan Prasad, J)

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