

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17281 of 2022

Binod Paswan, Son of Ram Lagan Paswan, resident of Village- Bineyaka,
P.S.- Sherghati, District- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Food and Consumer Protection Department, Govt. of Bihar, Old Secretariat, Patna.
2. The Commissioner, Magadh Division, Gaya.
3. The District Magistrate, Gaya.
4. The SDC, Sherghati, Gaya.
5. The Block Supply Officer, Imamganj, Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Vijay Anand, Adv.
For the Respondent/s : Mr. S. Raza Ahmad (AAG 5)

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

4 10-07-2024 Head learned counsel for the parties.

2. The present writ petition has been filed for the following relief(s):-

“(i) Order dated 20.01.2022 passed by Learned Commissioner, Magadh Division, Gaya in Supply Revision Case No. 13/2018 whereby and whereunder the supply appeal preferred by the petitioner against the order of the cancellation of license dated 10.03.2012 passed by SDO Sherghati was on dismissed on the ground that petitioner has failed to produce any fresh evidence in support of his case.

(ii) Order dated 18.12.2014 passed by Collector, Gaya in supply appeal No. 38/2013



whereby and whereunder the appeal preferred by the petitioner was dismissed and affirming the order of cancellation of license dated 10.03.2012 passed by SDO Sherghati.

(iii) Order dated 10.03.2012 passed by SDO Sherghati by which the PDS license of the petitioner was cancelled after accepting the recommendation of the cancellation of license by the Block supply Officer, Imamganj.

(iv) Pass such other order/s as your lordship may deemed fit and proper in the fact and circumstances of the case.”

3. Learned counsel appearing on behalf of the petitioner has stated that the Sub-Divisional Officer while issuing the show cause notice to the petitioner has not enclosed the enquiry report.

4. Further learned counsel has relied on the judgment of this Hon'ble Court in CWJC No.253 of 2014 dated 11.03.2015 wherein this Hon'ble Court has held that the non-supply of the enquiry report along with the show-cause is bad and against the principle of natural justice and equity.

5. Learned counsel has stated that in view of the above mentioned provisions of law and judgment relied by the petitioner, the impugned order may be set aside and matter remanded back to the authorities concerned for furnishing a



copy of the enquiry report and any other material that they seek to rely on and give an opportunity of filing his explanation and thereafter take necessary action.

6. Per contra, the learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the writ petition and stated that the present writ petition is not maintainable as the petitioner has exhausted all the remedies and the authorities have found that the petitioner has violated the provisions of the Control Order, 2016. Learned counsel has therefore prayed this Hon'ble Court to dismiss the present writ petition.

7. This Court in CWJC No.253 of 2014 dated 11.03.2015 held as under:

"In my opinion, irregularities in maintenance of notice board or maintenance of the stocks within the premises of the petitioner are too trivial and cannot form a basis for cancellation of licence. No doubt there were other serious charges against the petitioner regarding non-issuance of cash-memo to the consumers, distribution of lesser amount of kerosene oil and non-distribution of food-grains but surprisingly even while making such allegations, the names of such consumers who are dissatisfied by such action of the petitioner are conspicuously missing. The allegations are sweeping in nature without reference to any specific consumer.

In my opinion the non-supply of



the enquiry report conducted by the District Level Committee which is the foundation for issuance of show cause notice placed at Annexure-1 as well as non-supply of names of such of the consumers who had complained against the petitioner as regarding the irregularities in distribution of the food-grains or the kerosene oil has prejudiced the petitioner to file his purposeful reply and in absence thereof, the order impugned in my opinion, are based on no materials.

Though it was strenuously argued by Mr. Pandey that in absence of any response by the petitioner the allegations would be deemed to have been admitted but in my opinion even if the show cause reply was missing, the orders passed by the statutory authorities having civil consequences and resulting in cancellation should reflect application of mind. Unfortunately it is grossly missing inasmuch as neither the order of the Licensing Authority nor the order of the appellate authority deal with the materials which formed the basis to drive home the charges. The orders impugned are indefensible and cannot be upheld."

8. A perusal of the show-cause notice issued to the petitioner does not reveal that the copy of the enquiry report was enclosed along with the show-cause notice.

9. Having regard to the above facts and circumstances and the law laid down by this Hon'ble Court, the present CWJC is allowed. The impugned orders dated 20.01.2022, 18.12.2014 and 10.03.2012 passed by the Divisional Commissioner, the



District Magistrate and the Sub-Divisional Officer, respectively, are set aside. The matter is remanded back to the Sub-divisional Officer (Respondent No. 4) for furnishing a copy of the enquiry report and any other material relied on the petitioner and call for his explanation by giving reasonable time. In case the authorities want to rely on the statement of any of the complainants, the name of the said complainants shall be furnished to the petitioner and he shall be given an opportunity of cross-examining them.

10. With the above directions, the present writ petition stands disposed of.

(A. Abhishek Reddy , J)

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