

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8739 of 2020

Birendra Paswan @ Virendra Paswan S/o Mungeshwar Paswan resident of
Village- Mahadeo Khurd, P.S. and Block- Gurua, District- Gaya.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Food and Civil Supplies, Govt. of Bihar, Patna.
2. The Divisional Commissioner, Magadh Division, Gaya.
3. The District Magistrate, Gaya.
4. The Sub Divisional Officer, Sherghati, Gaya.
5. The Assistant District Supply Officer, Gaya.
6. The Block Supply Officer, Gurua, Gaya.

... .. Respondents

Appearance :

For the Petitioner/s : Mr.Md. Javed Jafar Khan, Advocate
For the Respondent/s : Mr. Arvind Ujjawal, SC 4

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 01-02-2021

Heard learned Counsel for the petitioner as well as learned State Counsel, both of whom are appearing through virtual mode.

The Public Distribution System Licence (hereinafter referred to as “PDS” licence” for brevity) of the petitioner has been cancelled by the Subdivisional Officer, Sherghati, under order dated 27.1.2015. Action has been taken on the basis of an inspection done of the petitioner's PDS premises by the Block Suopply Officer Gurua (Gaya) on 10.12.2014 based on certain allegations levelled by some persons. The Sub-divisional Officer after going through the inspection report, served a notice dated 18.12.2014 to the petitioner, wherein five irregularities were alleged;



- (i) that the supply between the card holders was not regular.
- (ii) the petitioner was not opening his dealership as per the direction issued by the Government and
- (iii) that he was opening the dealership as per his own whims.
- (iv) The petitioner is also alleged to be misbehaving with the beneficiaries.
- (v) The last allegation is that after distribution of the essential commodities for a particular month the petitioner used to make a false entry that he has made supply for two months.

The petitioner submitted a detailed reply to this notice. The same is Annexure 4 of the writ petition. The petitioner has denied all the allegations. He has asserted that other than some oral complaints made by some individuals there is no documentary evidence in support of the allegations. Even the inspection report, which has been considered by the Sub-divisional Officer, does not take into consideration any documentary evidence to support the allegations. In respect of some individuals, who has supported the allegations against the petitioner, he has stated that they are members of an extremist outfit and have been making illegitimate demands from him since before. Three complaints in this regard dated 17.11.2014, 8.12.2014 and 22.12.2014 have earlier been submitted by the petitioner, reference of which is to be found in the petitioner's reply.

The Sub-divisional Officer has proceeded to cancel the PDS licence of the petitioner under his order dated 27.1.2015. The order records the allegation as per the notice dated 18.12.2014. It



takes note of the statements of some beneficiaries of the petitioner's dealership. In respect of the allegation that the petitioner was making entries in the cards of the beneficiaries in excess of supply made, no documentary evidence has been produced or considered. The Sub-divisional Officer, Sherghati has proceeded to cancel the petitioner's PDS licence for the reason that the explanation/reply submitted by the petitioner/licensee is unsatisfactory. The specific finding of the Sub-divisional Officer is being reproduced:-

“बरती गई अनियमितताओं के संबंध में विक्रेता से स्पष्टीकरण की मांग की गई । विक्रेता द्वारा समर्पित स्पष्टीकरण संतोषजनक नहीं पाया गया । परन्तु विक्रेता का स्पष्टीकरण संतोषप्रद नहीं है ।”

The conclusion of the Sub-divisional Officer is vague, shows non application of mind and is based on the petitioner's alleged inability to satisfy the Sub-divisional Officer regarding his innocence rather than recording a finding that the allegations have been found established on certain grounds.

This Court would observe that onus of establishing the allegation was on the State/allegationist. On some material the charges were required to be established.

Paragraph 12 of the Control Order, 2011 prescribes remedy of appeal against an order passed by the Sub Divisional Officer cancelling the licence. The District Magistrate was the appellate forum. The petitioner had approached the District Magistrate by an appeal. The same was also rejected under order dated 25.6.2015.



Rather than remedying the irregularities committed by the Sub-divisional Officer, the District Magistrate has concurred with the same. The District Magistrate was of the opinion that the explanation submitted by the petitioner were without any evidence, false and concealing the evidence. The appellate authority has also sustained cancellation of petitioner's PDS licence on the ground that the petitioner has not been able to disprove the allegations. Operative portion of the District Magistrate's order reads as under:-

उभय पक्षों को सुनने एवं अभिलेख पर उपलब्ध कागजातों के परिशीलन से मैं इस निष्कर्ष पर पहुँचता हूँ कि अपीलार्थी द्वारा समर्पित स्पष्टीकरण में अपने विरुद्ध लगाये गये आरोप के संबंध में कोई युक्तियुक्त साक्ष्य प्रस्तुत नहीं किया गया जबकि विक्रेता के विरुद्ध पूर्विकर्ताप्राप्त कार्डधारियों को नियमित खाद्य अन्न की आपूर्ति नहीं करने, किरासन तेल की आपूर्ति निर्धारित मात्रा से कम एवं निर्धारित दर से अधिक लेने, सरकारी निदेश के अनुसार दुकान ससमय नहीं खोलने उपभोक्ताओं के साथ उपदण्डतापूर्वक व्यवहार करने एवं उपभोक्ताओं को खाद्यान्न की आपूर्ति एक माह का करते हुए दो माह की प्रविष्टि राशन कार्ड पर दर्ज करने संबंधी अनियमितता प्रमाणित हुई। इससे स्पष्ट होता है कि अपीलार्थी द्वारा समर्पित स्पष्टीकरण के सभी बिन्दुओं को साक्ष्यहीन, गलत एवं साक्ष्य को छिपाते हुए अपने बचाव हेतु गलत ढंग से तैयार किया गया है।

The petitioner in the circumstances had approached this Court earlier by filing a writ petition. The State in those proceedings had taken an objection that the petitioner at that stage was having an alternative remedy. The writ petition was accordingly disposed of granting liberty to the petitioner to file revision before the revisional authority against the order of the



Appellate Authority, i.e. District Magistrate, Gaya. The order was passed in CWJC No. 13618 of 2015 on 30.10.2017. Thereafter the petitioner has approached the revisional authority i.e. the Commissioner, Magadh Division, Gaya.

Unfortunately the revisional order dated 22.8.2019 also does not in any way show that the petitioner's case has been considered any better than what was done by the Sub Divisional Officer or the District Magistrate. The Commissioner, Magadh Division, Gaya by his order dated 22.8.2019 has again committed the same procedural lapse, which was committed by the SDO and the District Magistrate. He has proceeded to reject the petitioner's revision for the reason that during the course of enquiry the petitioner could not produce any concrete evidence against the allegations which were levelled by notice dated 18.12.2014. The Commissioner has also found the charges to be established because the petitioner could not disprove the allegations.

The Court had earlier granted time to the State to file a counter affidavit on 5.11.2020 and thereafter on 13.1.2021. While granting time to the State Counsel on 13.1.2021 this Court had made it clear that if no counter affidavit was filed, this Court would proceed to adjudicate the claim with a presumption that the respondents have not raised any objection in opposition to the claim raised in the writ petition. Learned State Counsel submits that till date he has no instruction for filing a counter affidavit. In the circumstances, there is no reason for granting any further adjournment to the State Counsel to file any counter affidavit. This Court does not propose to enter the rival claims based on factual issues regarding various allegations made against the petitioner. Instead of looking into correctness of the decision to cancel the petitioner's licence, this Court would confine its consideration



within the scope of judicial review, to examine correctness of the decision making process. For a proper appreciation this Court would consider it useful to quote Clause (ii) of Para 7 of the Control Order, 2011, which reads:-

“(ii) If any licensee contravenes any provision or any terms and conditions of license or any of his duties and responsibilities or any order of State Government then without prejudice to any other action that may be taken against him under the Essential Commodities Act, 1955 (Central Act 10 of 1955), his license may be cancelled by the Licensing Authority by written order.

No order of cancellation shall be made under this clause unless the licensee has been given a reasonable opportunity stating its case against the proposed cancellation’. The similar matter shall be disposed by the Licensing Authority within a month.”

In keeping with the principles of *audi alterem partem* the Control Order 2011 requires an order cancelling the license to be preceded by a reasonable opportunity to the licensee to state its case. It acknowledges mandatory observance of the principles of natural justice by licensee before an order is issued inflicting the penal consequences of cancellation of licence. At the same time it recognises the right of the licensee whose license is proposed to be cancelled to a fair treatment to ensure a just decision in respect of the proposed cancellation of license.

The reasonable opportunity of stating the case in Clause (ii) of Para 7 of the Control Order 2011 does not mean a mere show cause notice to the licensee. It is not just a formality in between the proposed cancellation; and the order cancelling



license. The reasonable opportunity of stating his case should manifest in a procedure where the licensing authority, who proposes the cancellation, should take a considered decision after looking into the case stated by the licensee, pursuant to the reasonable opportunity. If this is done, every proposal of cancellation of license by the licensing authority may not culminate into actual cancellation of licence.

Reasonable opportunity of stating the case, which has been granted to the licensee under Clause (ii) Para 7 of the Control Order 2011, is necessarily required to be followed by a consideration by the licensing authority of the case stated by the licensee, in response to the show cause. After such consideration the licensing authority, if he finds some material to carry forward the proposal for cancellation of license, then only an order should be issued cancelling the license. On the other hand, if after consideration of the case stated by the licensee, the licensing authority does not find any material or basis to carry forward the proposal for cancellation of license, the proposal may not culminate into cancellation of licence. Therefore this Court is of the opinion that consideration by the licensing authority of the case stated by the licensee is vital to the licensee's realisation of reasonable opportunity contemplated under Clause (ii) Para 7 of the Control Order.

Consideration that is required must be by an order supported by reasons and consideration of relevant material placed on record by the inspecting authority, (in this case the Block Supply Officer) and the licensee (petitioner). The formation of opinion to cancel the licence or not should be based on a manifest consideration of the material on record, and based on some material.



In the instant case decision of the licensing authority to cancel the licence is not based on any material whatsoever. At the same time, it does not take into consideration any of the points urged by the petitioner while availing his opportunity of stating his case, by reply to show cause dated 26.12.2014 (Annexure 4 to the writ petition).

The licensing authority has failed in its duty to give reasons in support of its decision based on any material or after due consideration of the petitioner's reply to show cause. The reasonable opportunity contemplated in Clause (ii) Para 7 of the Control Order 2011 has, in the facts and circumstances of the case, been reduced to an empty formality. In this connection, this Court would refer to decision of the Apex Court in the case of *Chairman Life Insurance Corporation of India & ors Vs. A Masilamani* reported in (2013) 6 SCC 530 . Para 19 of which reads as follows:-

“19. The word “consider” is of great significance. The dictionary meaning of the same is, “to think over”, “to regard as”, or “deem to be”. Hence, there is a clear connotation to the effect that there must be active application of mind. In other words, the term “consider” postulates consideration of all relevant aspects of a matter. Thus, formation of opinion by the statutory authority should reflect intense application of mind with reference to the material available on record. The order of the authority itself should reveal such application of mind. The appellate authority cannot simply adopt the language employed by the disciplinary authority and proceed to affirm its order. (Vide *Indian Oil Corpn. Ltd. v. Santosh Kumar* [(2006) 11 SCC 147 : (2007) 1 SCC (L&S) 388] and *Bhikhubhai*



Vithlabhai Patel v. State of Gujarat [(2008) 4 SCC 144 : AIR 2008 SC 1771] .)”

Para 20 to 22 of the decision of the Apex Court in the case of *Dharampal Satyapal Ltd. Vs. Deputy Commissioner of Central Excise, Gauhati & ors.* reported in (2015) 8 SCC 519 is also being relied upon by this Court. The same reads as follows:-

“20. Natural justice is an expression of English Common Law. Natural justice is not a single theory—it is a family of views. In one sense administering justice itself is treated as natural virtue and, therefore, a part of natural justice. It is also called “*naturalist*” approach to the phrase “*natural justice*” and is related to “*moral naturalism*”. Moral naturalism captures the essence of commonsense morality—that good and evil, right and wrong, are the real features of the natural world that human reason can comprehend. In this sense, it may comprehend virtue ethics and virtue jurisprudence in relation to justice as all these are attributes of natural justice. We are not addressing ourselves with this connotation of natural justice here.

21. In Common Law, the concept and doctrine of natural justice, particularly which is made applicable in the decision-making by judicial and quasi-judicial bodies, has assumed a different connotation. It is developed with this fundamental in mind that those whose duty is to decide, must act judicially. They must deal with the question referred both without bias and they must give (*sic* an opportunity) to each of the parties to adequately present the case made. It is perceived that the practice of aforesaid attributes in mind only would lead to doing justice. Since these attributes are treated as natural or fundamental, it is known as “*natural justice*”. The principles of natural justice developed over a period of time and which is still in vogue and valid even today are: (i) rule against bias i.e. *nemo debet esse iudex in propria sua causa*; and (ii) opportunity of being heard to the party concerned i.e. *audi alteram partem*. These are known as principles of natural justice. To these principles a third principle is added, which is of recent origin. It is the duty to give reasons in support of decision, namely, passing of a “*reasoned order*”.



22. Though the aforesaid principles of natural justice are known to have their origin in Common Law, even in India the principle is prevalent from ancient times, which was even invoked in Kautilya's *Arthashastra*. This Court in *Mohinder Singh Gill v. Chief Election Commr.* [(1978) 1 SCC 405 : AIR 1978 SC 851] explained the Indian origin of these principles in the following words: (SCC pp. 432-33, para 43)

“43. Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life. It has many colours and shades, many forms and shapes and, save where valid law excludes, it applies when people are affected by acts of authority. It is the hone [Ed.: The word “hone” is usually used as a verb, meaning “to sharpen”. Rarely, it is also used a noun, as here, meaning “whetstone”.] of healthy government, recognised from earliest times and not a mystic testament of Judge-made law. Indeed from the legendary days of Adam—and of Kautilya's *Arthashastra*—the rule of law has had this stamp of natural justice which makes it social justice. We need not go into these deeps for the present except to indicate that the roots of natural justice and its foliage are noble and not new-fangled. Today its application must be sustained by current legislation, case law or other extant principle, not the hoary chords of legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system.”

In view of the discussions above, the order of the licensing authority cancelling the petitioner's license is clearly unsustainable in law. The order dated 27.1.2015 passed by the Sub Divisional Officer, Sherghati as well as the subsequent consequential order dated 25.6.2015 passed by the District Magistrate, Gaya in Appeal No. 3 of 2015, as well as the order passed by the Divisional Commissioner, Magadh Division, Gaya on 22.8.2019 are bad in law and unsustainable. These three orders are quashed. As a result of quashing of these orders the petitioner is entitled to all consequential benefits.



At this juncture learned State Counsel submits that the mater be remanded to the Sub Divisional Officer. This Court would observe that the Sub Divisional Officer is not prevented in any manner from proceeding with the allegations afresh in accordance with law.

The writ petition stands allowed.

(Madhuresh Prasad, J)

SNkumar/-

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