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**(2009) 02 PAT CK 0147**

**Patna High Court**

**Case No:** CWJC No. 2049 of 2009

Anand Jha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision:** Feb. 11, 2009

**Citation:** (2009) 2 PLJR 303

**Hon'ble Judges:** Mihir Kr. Jha, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

Mihir Kr. Jha, J.

Heard learned counsel for the petitioner and the learned counsel for the State. The petitioner being aggrieved by an order dated 26th June, 2008 passed by the licensing authority, the Sub-Divisional Officer, Phulparas and its affirmance in the appellate order dated 22.11.2008 passed by the Collector of Madhubani District has moved this Court on the ground that though he was subjected to a show cause notice pointing out the anomalies but when the petitioner had filed his show cause reply the same was not considered and a mechanical order rejecting such show cause reply was passed in the process of cancellation of licence. He has also submitted that the appellate order of the Collector is suffering from same vice of non-application of mind, inasmuch as he too has not considered the explanation of the petitioner.

2. In order to appreciate the aforementioned aspect one will have to go into the content of the show cause notice, as contained in Annexure 2, wherein the following allegations were made:

3. It is to be borne in mind that such show cause notice was issued on the basis of personal inspection conducted by the licensing authority himself with a team of officials including the Block Supply Officer, Ghoghardiha, Block Supply Officer, Lokahi on 18.6.2008 at 11.55 A.M.

4. Obviously if the petitioner was to assail the personal observation of the conducting team he had to give certain materials which could have shaken the confidence of the Sub-Divisional Officer regarding his own observation recorded in the show cause notice. This Court, however, is amazed that whatever the petitioner has said in the explanation was not at all in any way even sufficient to deny the allegation, rather was based on alibi as would be evident from his following explanations:

5. If this was the explanation of the petitioner to an authority who had himself conducted the inspection, was it not sufficient for such authority to find it out that the explanation given by the petitioner was not inspiring confidence much less requiring to be dealt and considered by a reasoned order. The petitioner did not dispute that a building was being constructed and that the shop was closed or that there was no display board kept before the shop. All that he wanted to say was that there were certain reasons for not doing so. The licensing order and the conditions of the licence do not envisage such explanation from a Public Distribution System dealer. That apart when the authority was satisfied that the petitioner was having two shops; one of P.D.S. and the other a general shop, the reason in the show cause notice itself was sufficient to show that there was justifiable possibility for the licensing authority of being satisfied that the petitioner was not even maintaining the records of stock properly, a conduct which he has noted by the reason of absence of the stock register in the licenced premises. The explanation of the petitioner that the register was lying before the Mukhiya has to be only taken for the purpose of record because the Mukhiya is no one to keep such register.

6. Be that as it may, this Court is satisfied that the allegations against the petitioner was quite serious in nature and that he did not seek to controvert them by either asking any opportunity to lead any evidence as contemplated under Clause 11(2) and accordingly this Court must hold that the petitioner was given a reasonable opportunity to state his case before passing of the order of cancellation.

7. That will not in fact be the end of the matter, inasmuch as the whole issue was examined afresh in appeal at the instance of the petitioner and the appellate authority again having looked into the records had come to the following findings:

8. In the opinion of this Court, the complete reappraisal of the materials by the appellate authority by looking into the specific defence of the petitioner as also

recording the finding that there were glaring discrepancies in the P.D.S. shop of the petitioner would leave nothing for this Court to adjudicate the matter afresh on merits of the charge. This Court, therefore, is satisfied that there was no error in the decision making process and accordingly this application being misconceived is hereby dismissed.