

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12191 of 2018

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Vijay Kumar Singh Son of late Gyanchandra Singh Resident of Village-
Tejpura, P.S.- Obra, District- Aurangabad(Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner, Magadh Division, Gaya.
3. The District Magistrate Cum Collector, Aurangabad.
4. The Sub- Divisional Officer, Daudnagar, District- Aurangabad.
5. The District Supply Officer, Distt.- Aurangabad.
6. The Block Development Officer, Obra, District- Aurangabad.
7. The Block Supply Officer Cum Marketing Officer, Obra at District Aurangabad.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjit Kumar
For the Respondent/s : Mr. S.Raza Ahmad -Aag5

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 07-12-2018

1. The present writ petition has been filed for quashing the order dated 23.11.2017 passed by the Sub-Divisional Officer, Daudnagar, whereby and whereunder the P.D.S. licence of the shop of the petitioner has been cancelled. The petitioner has further prayed for quashing of the appellate order dated 25.05.2018.

2. The short point raised by the petitioner is that a show cause notice dated 22.07.2017 does not contain the proposed punishment of cancellation, hence it is submitted that sufficient opportunity has not been granted to the petitioner under clause 27(ii) of the Bihar Targeted P.D.S. (Control) Order,



2016 so that the petitioner could submit his defence against the punishment of proposed cancellation of licence. The learned counsel for the petitioner has relied upon a judgment rendered by a Division Bench of this Court, reported in 2018 (4) PLJR 516 (Ram Bachan Ram v. The State of Bihar and ors.), paragraphs no. 5, 6 and 7 are reproduced hereinbelow :-

5. Accordingly, contending that without taking note of these facts, the petitioner is being relegated to take recourse to the statutory remedy when there is a jurisdictional error in deciding the question of cancellation and placing reliance on a decision of the Hon'ble Supreme Court in the case of Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Others, (1998) 8 SCC 1, learned counsel argues that the case in hand carves out an exception where the availability of alternate remedy will not apply in the case of the petitioner as in violation to the statutory provision and there being jurisdictional error, the impugned action is liable to be set aside.

6. Even though, the respondents have filed a counter affidavit and have tried to justify the action, we find that under sub-clause (ii) of Order 27 of the Control Order, 2016, it is clearly stipulated that no order of cancellation of a licence shall be made until the licensee has been given sufficient opportunity to state his case against the proposal of cancellation. The words, 'proposal for cancellation' appearing in the statutory provision clearly contemplates that when the show cause notice is issued, licensee should be



categorically informed that there is 'proposal for cancellation of licence' and show cause notice issued as to why licence should not be cancelled. In the show cause notice issued to the petitioner, apart from the fact that there is no such proposal indicated asking him to show cause as to why licence should not be cancelled, we find that on the second ground also, the impugned action is not sustainable inasmuch as the petitioner gave a detailed explanation and justification against the proposed action, as is contained in Annexure-6, and in a cryptic manner, without considering the explanation and defence of the petitioner, his licence has been cancelled. This amount to violation of principles of natural justice inasmuch as the non-application of mind and passing an order adverse to or prejudice to a person without considering his defence is also a facet and the requirement of principles of natural justice and this having not been followed, we are of the considered view that principle laid down in the case of Whirlpool Corporation(supra) squarely applies in this case. The order impugned suffers from material legal infirmity and on this count itself without relegating to the petitioner to take recourse to the statutory remedy available, the question could have been considered by the learned Writ Court as is apparent from the face of record that there is statutory violation or violation of the principles of natural justice.

7. Keeping in view the aforesaid, we allow the appeal, quash the order passed by the learned Writ Court on 02.04.2018 in Civil Writ Jurisdiction Case no. 4687 of 2018, quash the cancellation order passed on 20th



January, 2018, Annexure-7, direct for restoration of the licence of the petitioner. However, liberty shall be available to the respondents to take action afresh in accordance with law, if so advised.

3. The learned counsel for the respondents does not controvert the aforesaid position as existing in law.

4. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, the present writ petition is allowed and the order dated 23.11.2017 passed by the Sub-Divisional Officer, Daudnagar as also the appellate order dated 25.05.2018 are quashed. It is needless to state that the Sub-Divisional Officer, Daudnagar would be free to initiate fresh proceedings in accordance with law, if so required.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	.12.2018
Transmission Date	NA

