

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.17372 of 2016**

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Umesh Prasad, Son of Sri Karu Mahto, Resident of Village- Kanehanpur, P.S.-  
Deepnagar, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Civil Supply Department, Old Secretariat, Patna.
2. The Principal Secretary, Food and Civil Supply Department, old Secretariat, Patna.
3. The Divisional Commissioner, Patna.
4. The District Magistrate, Nalanda at Biharsharif.
5. The Sub Divisional Officer, Biharsharif, District- Nalanda.
6. The District Supply Officer, Biharsharif, District- Nalanda.
7. The Supply Inspector, Nagar Parishad, Biharsharif, District- Nalanda.
8. The Revenue Karmchari, Halka No.-06, Biharsharif, District- Nalanda.

... .. Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. N.K. Agrawal, Sr. Advocate<br>Mr. Vijay Anand, Advocate<br>Mr. D.N. Tiwari, Advocate |
| For the Respondent/s | : | Mr. Sanjay Kr. Giri- GP9                                                                 |

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**CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL**  
**ORAL JUDGMENT**

**Date : 01-08-2018**

Heard Mr. N. K. Agrawal, Senior counsel for the  
petitioner and the learned counsel appearing on behalf of the State.

Petitioner has sought quashing of the order dated  
28.01.2016 passed by the Divisional Commissioner, Patna in  
Revision Case No. 376 of 2013, Annexure-1, order dated  
06.12.2012 passed by the learned District Magistrate, Nalanda at  
Biharsharif passed in Supply Case 29 of 2012, Annexure-2 and the  
order of the learned Sub Divisional Officer, Biharsharif dated  
07.04.2012 as contained in Annexure-3.



The case of the petitioner has a chequered history. Petitioner had been granted licence to run the Public Distribution Shop at Sakraul, Biharsharif, District- Nalanda vide Licence No. 71/89, which was subsequently renumbered as 45/Bihar/07. The PDS shop of the petitioner was inspected on 05.01.2007 and it was found closed. Thereafter, some beneficiaries complained against non- supply and irregular supply of foodgrains and kerosene oil. On 10.01.2007, again an enquiry was conducted by the Block Supply Officer, Biharsharif and on perusal, certain irregularities were found. Thereafter, again on 27.07.2007, the PDS shop of the petitioner was inspected and the shop was found closed. Petitioner was issued a show cause dated 07.08.2007 on the basis of the enquiry conducted by the Block Supply Officer, Biharsharif dated 27.07.2007 and the petitioner replied to the show cause stating therein that his wife was sick on the date of inspection, enclosed medical certificates and also stated that the beneficiaries have not been named alleging supply being irregular, which is being distributed to the beneficiaries. An FIR was also lodged against the petitioner under Section 07 of the E.C. Act being Deepnagar P.S. Case No. 114 of 2007. The reply having been found unsatisfactory, the Sub-Divisional Officer, Biharsharif cancelled the licence of the petitioner on 01.09.2007. Petitioner challenged the said order



before this Court in CWJC No. 16658 of 2007, which was disposed of on 29.09.2011 directing the Sub-Divisional Officer, Biharsharif to pass a speaking order. In the meantime, the petitioner approached this Court for quashing the order of cognizance and the entire proceedings in connection with Deepnagar P.S. Case No. 114 of 2007, which was quashed by this Court in Cr. Misc. No. 17406 of 2008 vide order dated 08.01.2010 with an observation that the said order quashing the criminal proceeding would not affect the proceedings regarding cancellation of licence. The petitioner thereafter was issued show cause vide letter dated 23.11.2011 after the order passed by this Court in CWJC No. 16658 of 2007. The petitioner submitted his reply stating therein that the criminal proceeding has been quashed, hence, the order cancelling the licence should also be revoked, but by order dated 07.04.2012 again the P.D.S. licence of the petitioner was cancelled. The petitioner again moved this Court in CWJC No. 18004 of 2012, which was disposed of on 26.09.2012 with a liberty to the petitioner to challenge the order of cancellation in appeal. The said order was challenged in appeal. The impugned order dated 06.12.2012 was passed by the learned District Magistrate affirming the cancellation order passed by the Sub-Divisional Officer. The appellate order has also been upheld



by the Divisional Commissioner, Patna vide order dated 28.01.2016 against which the present writ application has been preferred.

Learned counsel for the petitioner submits that the impugned order cancelling the P.D.S. licence of the petitioner, which has been affirmed in appeal and revision, has been passed without supplying the enquiry report and the list of the beneficiaries, who had complained against the petitioner. He submits that no enquiry report, which is Annexure-5 dated 10.01.2007 is part of the show cause notice dated 07.08.2007, Annexure-6 issued after inspection of the petitioner's P.D.S. shop on 27.07.2007. Hence, in view of the order passed by this Court in CWJC No. 253 of 2014 decided on 11.03.2015 especially the observation that non-supply of enquiry report and non-supply of names of beneficiaries who had complained against the petitioner as regarding the irregularity of distribution of foodgrains and kerosene oil, the impugned order is based on no material. He submits that the names of the beneficiaries, who had complained against the petitioner which is also mentioned in the order cancelling the PDS licence of the petitioner by the Sub Divisional Officer, Biharsharif and taken note by the appellate authority was never supplied to the petitioner so that he could have controverted



the same. He submits that non-supply of enquiry report and the names of the beneficiaries who had complained, resultantly cancelling the PDS licence having civil consequences should have been passed after proper application of mind. He further submits that the petitioner was not afforded an opportunity to cross-examine the beneficiaries and order cancelling the licence has been passed in violation of the principles of natural justice. He submits that even otherwise after the criminal case having been quashed by this Court as the consequence his licence should have been restored in view of Section 29 proviso of the Bihar Targeted PDS (Control) Order 2016. He submits that the Bihar Targeted PDS (Control) Order 2016 would be applicable as after repeal of the earlier Control Order 2007 in view of Section 34 all the action taken would be deemed to be taken under this Control Order 2016.

However, learned counsel for the State submits that the petitioner's fair price shop was inspected on 05.01.2007 which was found closed. Again it was inspected on 10.01.2007 and certain irregularities were found. Thereafter, on 27.07.2007 again the shop was inspected and found closed, as such the order of cancellation passed by the Sub Divisional Officer affirmed by the appellate authority and the revisional authority is legal and proper.



I am in agreement with the submissions of the petitioner.

Although a show cause was issued in pursuance to the inspection dated 27.07.2007 but the earlier inspection dated 05.01.2007 and 10.01.2007 formed the basis of the said show cause dated 07.08.2007 which is Annexure-6. The enquiry report, certified copy of which the petitioner has obtained which is Annexure-5 dated 10.01.2007 by the Supply Inspector, Nagar Parishad, Biharsharif was submitted to the Sub Divisional Officer, Biharsharif without forwarding any copy of the said enquiry report with the list of beneficiaries to the petitioner. The petitioner in his reply to the show cause dated 07.08.2007 had also pointed out that the list of beneficiaries who had complained, had not been given to him and neither furnished to the petitioner for cross-examination before the Sub Divisional Officer or the appellate/revisional authority. The order of cancellation has been passed by the licensing authority without supply of enquiry report and without supply of names of such consumers, therefore, the impugned order of cancellation, in my opinion, is based on no material. Consequently, the order passed by the appellate authority and the revisional authority are indefeasible and cannot be upheld.

In the result, the writ application is allowed, the order passed by the licensing authority dated 07.04.2012 as contained in



Annexure-3 along with the order of the appellate authority dated 06.12.2012 as contained in Annexure-2 and the order passed by the Divisional Commissioner dated 28.01.2016, Annexure-1 in Revision case no. 376 of 2013 are set aside and the licence of the petitioner stands restored.

This order would, however, not preclude the respondents from proceeding in the matter in accordance with law bearing in mind the observation hereinabove.

**(Nilu Agrawal, J)**

Arjun/Pragya

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