

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.499 of 2018

In
Civil Writ Jurisdiction Case No.4687 of 2018

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Ram Bachan Ram, Son of late Kalut Ram@ late Kaltu Ram, Resident of
Village- Barah, P.S. Rani Talab, District- Patna.

... .. Appellant/s

Versus

1. The State of Bihar through the Secretary, Food & Consumer Protection
Department, Bihar, Patna.
2. The District Magistrate-cum-Collector, Patna District- Patna.
3. The Sub-Divisional Officer, Paliganj, Patna, District-Patna.
4. The Block Supply Inspector, Bikram, Patna, District- Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Sumeet Kumar Singh, Advocate
For the Respondent/s : Mr. S. Raza Ahmad, AAG 5

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 10-07-2018

Seeking exception to an order dated 02.04.2018 passed
by the Writ Court in CWJC No.4687 of 2018 relegating the
petitioner to take recourse to the statutory remedy available of
filing an appeal under the Bihar Targeted P.D.S. (Control) Order,
2016 (hereinafter referred to as, 'the Control Order, 2016'), this
appeal has been filed under Clause 10 of the Letters Patent.

The facts in nutshell go to show that the petitioner was
granted a licence for establishment of PDS shop and vide memo
dated 06.03.2018, the licence of the petitioner was cancelled.
Challenging the same, the writ petition in question was filed and



the writ petition has been dismissed on account of availability of alternate remedy. However, the facts that have come on record indicate that earlier, the licence of the petitioner was suspended and the petitioner challenged the same in CWJC No.6341 of 2017 and by an order passed on 09.10.2017, a bench of this Court found that under clause 28 of the Control Order, 2016, the suspension cannot be allowed to operate beyond a statutory period, i.e. 180 days, and in this case, as the suspension had continued for a period of 280 days, the suspension order was set aside and licence were directed to be restored.

After restoring the licence, a show cause notice, Annexure-5 was issued to the petitioner wherein he was directed to show cause against an enquiry report and explain the findings recorded by the enquiry officer. The petitioner submitted a detailed objection to the same, vide Annexure-6, and vide Annexure-7 dated 20th January, 2018, the licence of the petitioner have been cancelled.

Challenge to the cancellation of licence is made primarily on account of two facts; one that no show cause notice for proposing the cancellation of licence was ever issued to the petitioner, as is contemplated under Order 27 Rule (ii) of the Control Order, 2016 and even if the show cause notice, Annexure-



5, is construed to be a show cause in this regard, it does not show application of mind and consideration of the objection of the petitioner, as is contained in Annexure-6.

Accordingly, contending that without taking note of these factors, 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 vs 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.

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 amounts 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.

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.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Sunil/-

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