

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7301 of 2019

Prakash Yadav Son of Late Ram Khelavan Yadav Resident of Village-
Mahmatpur, P.S.-Sarmera, District-Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
2. The Collector, Nalanda.
3. The Sub Divisional Officer, Biharsharif, Nalanda.
4. The Block Supply Officer, Sarmera, Nalanda.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.N.K. Agrawal, Sr. Advocate Mr.P.C. Agrawal, Advocate
For the Respondent/s	:	Mr.Alok Ranjan, A.C. to A.A.G.5

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 22-07-2019 Heard learned Senior Counsel for the petitioner and
learned counsel representing the State.

Petitioner in this case is aggrieved by and dissatisfied with the order as contained in Memo No. 146 dated 14.02.2019 (Annexure '9') by which the Sub-Divisional Officer, Biharsharif has held that there is no need to amend the order as contained in Memo No. 1444 dated 17.10.2017 and the same is maintained.

Earlier the petitioner who is a licensee of the Fair Price Shop was served with a show cause notice dated 28.08.2017 by which he was called upon to show cause as to why for the alleged irregularities and violation of the terms of license his Fair Price Shop license be not cancelled. That show



cause notice led to cancellation of his license vide order contained in Memo No. 1444 dated 17.10.2017. The petitioner moved this Court in C.W.J.C. No. 19472 of 2018 challenging the said order of cancellation of his license. This Court having found that no enquiry report was supplied to the petitioner along with the show cause notice, he was precluded from submitting a wholesome defence. Relying upon the judgment of this Court in the case of **Brahmdeo Rai versus The State of Bihar & Ors.** reported in **2013(2) PLJR 706**, this Court quashed the impugned order dated 17.10.2017. However, liberty was granted to the Sub-Divisional Officer, Biharsharif to proceed afresh in the matter.

After the aforesaid order was passed, the petitioner was served with a copy of the enquiry report which was replied by the petitioner vide Annexure '8' to the writ application. Thereafter, the Sub-Divisional Officer, Biharsharif has passed the impugned order (Annexure '9') a perusal of which clearly demonstrates that he has not at all gone through the explanation submitted by the petitioner rather he has relied upon the report of the Block Supply Officer, Sarmera who has stated in his report dated 02.02.2019 that the show cause of the petitioner is not satisfied. The impugned order leads to a clear conclusion



that the Sub-Divisional Officer, Biharsharif has not at all enquired into the matter at his end and he has not even looked into the explanation/show cause submitted by the petitioner. What is totally against the judicial discipline is the views expressed by the Sub-Divisional Officer, Biharsharif in his order stating that there is no need to amend the earlier order dated 17.10.2017. By no stretch of imagination, the order dated 17.10.2017 may be said to have been left for any purpose by the Sub-Divisional Officer, Biharsharif. He being a responsible officer of the State must have understood that once the order has been set aside by this Court, he cannot take a view in the nature he has taken in the impugned order saying that there is no need to amend the previous order and the said order is maintained. This is in fact in the nature of a contemptuous statement and observation in the impugned order.

For the aforesaid reason, the impugned order is hereby set aside and the matter is remitted to the Sub-Divisional Officer, Biharsharif for a fresh consideration/explanation, verification of the materials on the record and to pass a reasoned order upon consideration of the entire materials on the record. He must take note of the views of this Court that whenever the order is set aside by this Court, he cannot reiterate



the same order by saying that the order is maintained. He would be required to pass a fresh reasoned order. Let the whole exercise be completed within a period of 90 days from the date of receipt/production of a copy of this order.

By virtue of the setting aside of the impugned order, the license of the petitioner shall stand restored.

Writ application is thus allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

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