

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11838 of 2018

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Arvind Sah Son of Banshi Sah, Owner of PDS Shop, Resident of Rustampur Block, P.S.- Raghopur, District- Vaishali.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Food and Civil Supply Department, Govt. of Bihar, Patna.
2. District Magistrate, Vaishali, Hazipur.
3. Sub Divisional Officer, Hazipur at Vaishali Supply.
4. Prakhand Supply Officer, Raghopur, Vaishali.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Anujit Sinha, Advocate
For the Respondent/s : Mr.Maruth Nath Roy, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 11-03-2019 This writ application has been preferred seeking the following reliefs :-

“(i) For quashing memo no. 211 dated 20.12.2017 passed by Sub-Divisional Officer, Hazipur, Vaishali.

(ii) For direction to reinstate the license no. 70/2007 of petitioner and not to interfere in day to day functioning of PDS Shop of petitioner.

(iii) For any relief/reliefs in accordance with law to which the petitioner is entitled to.”

Learned counsel for the petitioner has, for purpose of reliefs prayed in the writ application, at this stage, raises the short point for consideration. It is his submission that from a bare perusal of the show cause notice vide memo dated 13.10.2012 as contained in Annexure-4 to the supplementary



affidavit it would appear that the show cause notice was not proposing any cancellation of license. Referring to sub-clause (ii) of Order 27 of the Bihar Targeted P.D.S. (Control) Order, 2016 (hereinafter referred to as 'the Control Order, 2016).

Learned counsel submits that no order of cancellation of a license may be passed until the licensee has been given sufficient opportunity to state his case against the proposal of cancellation. In this connection reliance has been placed upon a Division Bench judgment of this Court in the case of **Ram Bachan Ram Vs. State of Bihar and others** reported in **2018 (4) PLJR 516**.

On the other hand, learned counsel representing the State submits that the show cause notice issued to the petitioner clearly states that legal action will be taken against him and, therefore, having given the opportunity of hearing to the petitioner if the respondents have taken a decision to cancel the license of the petitioner, no illegality or infirmity may be found with the same. In this regard learned counsel for the State has also relied on the statement made in Paragraph-21 of the counter affidavit to submit that the Public Distribution Shop of the petitioner was inspected several times and he was also given opportunity to correct himself but no improvement was made by



the petitioner.

Having heard learned counsel for the petitioner and learned counsel representing the State, this Court finds that so far as Annexure-4 is concerned, apparently it is not in accordance with the requirement of law as provided in sub-clause (ii) of Order 27 of the Control Order, 2016. Further, the Court also finds that the statements of the State-respondent in Paragraph-21 of the counter affidavit are not supported by any material on the record. In absence of any documentary evidence to support this submission, this Court cannot accept the statements made in Paragraph-21 of the counter affidavit to reject the submission of the learned counsel for the petitioner which is also based on a Division Bench judgment of this Court.

Paragrph-6 of the said judgment in case of **Ram Bachan Ram** (supra) reads as under :-

“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 noticed 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 court 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.”

Learned counsel for the State has, at this stage, also pleaded that there is an alternative remedy to the petitioner by way of an appeal before the Collector-cum-District Magistrate. The answer to such submission may also be found in Paragraph- 5 of the Division Bench judgment in the case of **Ram Bachan Ram** (*supra*) which reads as under :-

“5. 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.”

In the aforesaid view of the matter, as this Court has found that the impugned order has been passed without giving show cause notice in terms of the applicable provision of the Control Order, 2016, the impugned order is hereby set aside. This will, however, not come in the way of the Sub-Divisional Officer to proceed further in accordance with law. In consequence the license of the petitioner is restored and other consequential benefits shall follow.

This application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

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