

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.11152 of 2019**

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Rajesh Kumar, Age 56 years, Son of Late Jagarnath Prasad, Resident of Village Samhauta, Ward no. 13, Near School Samhauta, P.S. Sathi, District West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection, Government of Bihar, Patna.
2. The District Magistrate-cum-Collector, West Champaran, Bettiah.
3. The Sub Divisional Officer, Narkatiyaganj, West Champaran, Bettiah.
4. The District Supply Officer, West Champaran, Bettiah.
5. The Block Supply Officer, Narkatiyaganj, West Champaran, Bettiah.

... .. Respondent/s

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**Appearance :**

For the Petitioner : Mr. Sanjeev Kumar Mishra, Advocate  
For the Respondents : Mr. Upendra Pratap Singh, AC to SC-4

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA**  
**ORAL ORDER**

4      23-11-2020                      Heard Mr. Sanjeev Kumar Mishra, the learned counsel for the petitioner and Mr. Upendra Pratap Singh, the learned A.C. to S.C. 4 through video conferencing.

The petitioner in this writ petition seeks quashing of the order dated 31.08.2018, as contained in Memo No.428, passed by the Sub-divisional Officer, Narkatiyaganj, West Champaran, Bettiah by which the licence bearing Licence No.123/2007 of the petitioner under Public Distribution System was cancelled. The petitioner further seeks quashing of the order dated 29.03.2019, passed by the Collector, West Champaran, Bettiah by which the appeal of the petitioner against the order



for cancellation of licence of the petitioner passed by the Sub-divisional Officer has been dismissed.

The petitioner is a P.D.S. licence dealer. The petitioner received notice, as contained in Memo No.84, dated 06.03.2018, by which the petitioner was directed to file show cause. The petitioner again received another show cause, as contained in Memo No.280, dated 12.07.2018, calling upon the petitioner to file show cause. The petitioner submitted his first show cause on 13.03.2018 and the second show cause on 17.07.2018, but the Sub-divisional Officer, Narkatiyaganj vide his order dated 31.08.2018, as contained in Memo No.428, cancelled the licence bearing Licence No.123/2007 of the petitioner without taking into consideration the show cause filed by the petitioner. The appeal preferred by the petitioner against the order of the Sub-divisional Officer has already been dismissed on 29.03.2019, only in pursuance of the order of this Court passed in CWJC No.22680 of 2018, on consideration of the extraneous facts on which no show cause was asked for (Annexure-7).

Mr. Sanjeev Kumar Mishra, the learned counsel for the petitioner submits that the Sub-divisional Officer issued the first show cause on 06.03.2018, calling upon the petitioner to file show cause on six points enumerated in the show cause. It is



submitted that although no complaint made by the consumers either with regard to non-distribution of food grains or with regard to harsh behaviour with the consumers were attached with the show cause. The Sub-divisional Officer again served show cause on 12.07.2018, calling upon the petitioner to show cause that on the date of inspection of the shop on 11.07.2018, the shop was found closed and the display board was found broken. The petitioner filed his detailed show cause vide Annexure-3 and Annexure-3A, but the Sub-divisional Officer did not at all consider the facts put forth by the petitioner in his show cause and ordered for cancellation of the licence. The order cancelling the licence of the petitioner is non-speaking and it does not reflect that the plea of the petitioner was heard, therefore, the order is not sustainable. It is further submitted that the petitioner preferred appeal before the Collector, West Champaran, Bettiah on 15.09.2018, but the appeal remained pending. Thereafter the petitioner filed CWJC No.22680 of 2018, which was disposed of on 21.12.2018, with a direction to the District Magistrate-cum-Collector, West Champaran, Bettiah to dispose of the appeal within a period of 12 weeks from the date of order and in pursuance thereof, the Collector although discussed the facts but dismissed the appeal on 29.03.2019. It is



further submitted that from the order of the appellate authority also, it would appear that some other facts, which were not incorporated in the first or second show cause of the Sub-divisional Officer, have been considered. The authority is bound to consider only those facts on which the licence of the petitioner was cancelled and, therefore, the order is illegal and not sustainable. It is further submitted that if the order of the Sub-divisional Officer is bad on account of non-consideration of the show cause, the order of the appellate authority discussing the same does not make it curable and both the orders are liable to be set aside.

Mr. Upendra Pratap Singh, the learned counsel for the State as per contra submits that although he took several adjournments for filing counter affidavit but till date he could not be able to get instructions from the respondents and, therefore, he could not file counter affidavit. Learned counsel for the State further submits that from perusal of the appellate order passed by the appellate authority, it would appear that the appellate authority considered the entire show cause of the petitioner and only then dismissed the appeal.

Having considered the submissions and on perusal of Annexure-4, the order passed by the Sub-divisional Officer as



well as Annexure-7, the order passed by the appellate authority, I find that the Sub-divisional Officer has jumped to the conclusion without considering the show cause of the petitioner that the petitioner has violated different provisions of Clause 14 and 25(I) of Bihar Targeted Public Distribution System (Control) Order, 2016. From the order of the Sub-divisional Officer, it is apparent that the Sub-divisional Officer has not at all considered any part of the show cause of the petitioner. The order passed without considering the show cause of the petitioner is illegal and it amounts to non-providing sufficient opportunity to the petitioner. Such illegality cannot be cured by the appellate authority. Even from perusal of the order of the appellate authority, it appears that the show cause of the petitioner has not been considered on its own merit. Even the statements of the consumers, who are alleged to have made allegation of non-distribution of food grains regularly and misbehaviour of the licensee with the consumers, these allegations are only for the sake of allegations and on these allegations, unless the statements of the makers of the allegations are before the licensee, cannot be relied upon. Thus, I find that the order of the Sub-divisional Officer as well as the order of the appellate authority are not sustainable and both are fit to be set aside.



Accordingly, the order dated 31.08.2018, as contained in Memo No.428, passed by the Sub-divisional Officer, Narkatiyaganj, West Champaran, Bettiah as well as the order dated 29.03.2019, passed by the Collector, West Champaran, Bettiah are set aside. The matter is remitted to the Sub-divisional Officer, Narkatiyaganj, West Champaran, Bettiah to decide the matter afresh in accordance with law after hearing the petitioner within four months from the date of receipt of this order.

The writ petition is allowed.

**(Prabhat Kumar Jha, J)**

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