

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4844 of 2021

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Jitendra Singh Son of Vineshwari Singh Resident of Village- Ekauni, P.O. Agiyawana, P.S. Udwananagar, District- Bhojpur.

... .. Petitioner

Versus

1. The State of Bihar through the Secretary Food and Civil Supply Government of Bihar.
2. The District Magistrate, Bhojpur.
3. The Sub Divisional Officer, Ara.
4. The Block Supply Officer, Agiyawana.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Sanjeev Kumar Mishra Mrs. Manini Jaiswal
For the Respondents	:	Mr. S. Raza Ahmad (AAG-5) Mr. Alok Ranjan (AC to AAG-5)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

2 23-11-2021 The petitioner has put to challenge an order dated 17.02.2020 passed by Sub-Divisional Officer-cum-Licensing Authority, Sadar, Ara, whereby the petitioner's licence to run Fair Price Shop under Bihar Targeted Public Distribution System (Control) Order, 2016 ('BTPDS Control Order,2016'), has been cancelled.



Learned counsel appearing on behalf of the petitioner has submitted that no notice was ever given to the petitioner prior to issuance of the impugned order dated 17.02.2020, requiring him to explain. She contends that the impugned order has apparently been passed in breach of principles of natural justice and the mandatory requirement under Clause 27(ii) of BTPDS Control Order, 2016. She has also submitted that only on the basis of registration of F.I.R. against the petitioner, the impugned order has been passed. She contends that, though, an action of suspension of licence is permissible under Clause 28 of BTPDS Control Order, 2016, in the event of registration of criminal case, but the same cannot be the sole basis for cancellation of license. She has accordingly submitted that the impugned order is illegal and unauthorized.

A counter affidavit has been filed on behalf of the State of Bihar. The facts noted above are not in dispute. An F.I.R. has been registered against the petitioner. Before issuance of the impugned order dated 17.02.2020, admittedly no notice was issued to the petitioner as contemplated under Clause 27 (ii) of BTPDS Control Order, 2016.

Learned Counsel for the State has, however, argued that petitioner ought to have availed alternative remedy of appeal



under BTPDS Control Order, 2016.

On perusal of records and consideration of the submissions advanced on behalf of the parties that the impugned order is manifestly illegal having been passed in utter violation of principles of natural justice, without giving the petitioner an opportunity to explain and state his case against proposal for cancellation of licence.

Clause 27 (ii) of the BTPDS Control Order, 2016, bars passing of an order of cancellation until the licensee has been given sufficient opportunity to state his case against the proposal of cancellation of license.

In our view, thus, an order, which is passed by the licensing authority, canceling license without giving an opportunity to the licensee to state his case against the proposal of cancellation is without jurisdiction and *non-est* in the eye of law.

Secondly, Clause 28 of BTPDS Control Order, 2016, empowers the licensing authority to suspend the license in the event, a licensee is arrested or goes fugitive in connection with a criminal case, with immediate effect and after serving show cause notice upon him and giving him sufficient opportunity to present his case, a lawful action is permissible within 180 days



as far as possible. Even this procedure has not been followed.

Considering the admitted facts and circumstances of the case, the impugned order dated 17.02.2020 is set aside.

Accordingly, this application is allowed.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

K.K.RAO/-

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