

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23891 of 2018

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Akhalakh Ansari S/O Late Asagar Ansari R/O Village- Murlipur, P.S.
Sheosagar, District-Rohtas.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of Food and Civil Supply, Government of Bihar, Patna
2. The District Magistrate Cum Chairman, District Selection Committee, Rohtas at Sasaram.
3. The Sub Divisional Officer Cum Licensing Authority, Rohtas at Sasaram.
4. The Block Development Officer, Sheosagar, District- Rohtas.
5. The Circle Officer, Sheosagar, Rohtas.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sanjay Kumar Tiwary
For the Respondent/s : Mr.Arvind Ujjwal- Sc4

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 17-02-2021

1. The present writ petition has been filed challenging the order dated 09.07.2016, passed in Supply Case no. 8 of 2016 by the Sub-Divisional Officer-cum-Licensing Authority, Rohtas at Sasaram, whereby and whereunder the P.D.S. licence of the shop of the petitioner has been cancelled as also for setting aside the order dated 16.09.2016, passed in Appeal Case no. 17 of 2016 by the District Magistrate, Rohtas at Sasaram, whereby and whereunder the aforesaid order dated 09.07.2016 has been upheld and the appeal of the petitioner has been rejected.

2. Shorn of the details, it would suffice to state that a



show cause notice dated 23.02.2016 was issued to the petitioner calling upon him to submit his show cause reply within a period of 02 days as to why appropriate action be not taken against him on account of discrepancy found in the date of birth of his father. The petitioner is stated to have submitted his reply, however without properly considering the same, the Sub-Divisional Officer, Rohtas at Sasaram had cancelled the licence of the P.D.S. shop of the petitioner bearing Licence no. 1 of 2015 by an order dated 09.07.2016, whereafter the petitioner had challenged the same by filing an appeal bearing Appeal Case no. 17 of 2016, however the same has also been dismissed the learned District Magistrate, Rohtas at Sasaram by an order dated 16.09.2016.

3. The learned counsel for the petitioner has made a short submission to the effect that the impugned orders dated 09.07.2016 and 16.09.2016 are bad on account of the fact that the show cause notice dated 23.02.2016, served upon the petitioner, does not state about the proposed action of cancellation of his licence in the event of his show cause reply being found to be un-satisfactory, resulting in the petitioner being denied reasonable opportunity to state his case against the proposal of cancellation of his licence, which has further led to



violation of the Principles of Natural Justice. In this regard, the learned counsel for the petitioner has referred to a judgment reported in **2018 (4) PLJR 516 (Ram Bachan Ram vs The State Of Bihar & Ors.)**, paragraph no. 6 whereof, is reproduced hereinbelow :-

“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 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 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.”

4. The learned counsel for the State has submitted that the show cause reply, submitted by the petitioner has been considered at length and only then the aforesaid impugned orders have been passed. Nonetheless, the learned counsel for the State has not disputed the position, as is existing in law.

5. I have heard the learned counsel for the parties and gone through the materials on record. At the outset, it would be relevant to reproduce **Clause 27** of the **Bihar Targeted Public Distribution System (Control) Order, 2016** hereinbelow :-

“ 27. Cancellation of License. - (i) If a licensee violates any provision of this Order or fails to comply duties and responsibilities assigned to the license, his



license shall be cancelled by the licensing authority by a written order, and such a cancellation of license shall not affect other actions initiated/initiable under the Essential Commodity Act, 1955 (Central Act 10 of 1955).

(ii) No order of cancellation of a license shall be made until the licensee has been given sufficient opportunity to state his case against the proposal of cancellation of his license.

(iii) The cases of violation of the provisions of this Order shall be disposed of within two months, as far as possible, after coming in cognizance as for.”

6. It is clear from a bare perusal of the aforesaid ***Clause 27 of the Bihar Targeted Public Distribution System (Control) Order, 2016*** that in case, the respondent-authorities proposes to cancel the licence of the P.D.S. shop of a licence holder, the licensee has to be given sufficient opportunity to state his case against the proposal of cancellation of his licence, however in the present case, the show cause notice dated 23.02.2016, nowhere mentions about the proposal of cancellation of licence if the show cause reply of the petitioner is found to be un-satisfactory, hence it is apparent that the petitioner has been denied reasonable opportunity to represent his case against the proposed punishment of cancellation of licence, which in turn has led to violation of the Principles of



Natural Justice, hence in the opinion of this Court, the impugned order dated 09.07.2016, passed by the Sub-Divisional Officer-cum-Licensing Authority, Rohtas at Sasaram in Supply Case no. 8 of 2016 is bad in law, hence is quashed. Consequently, the appellate order dated order dated 16.09.2016, passed in Appeal Case no. 17 of 2016 by the District Magistrate, Rohtas at Sasaram has got no legs to stand, thus is also set aside.

7. The writ petition stands allowed, however with liberty to the respondent-authorities to proceed afresh, in accordance with law, if they so desire.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	NA
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