

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4327 of 2021

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Savitri Devi W/o Chandradeep Singh Resident of Village and Panchayat-Charma, P.S. - Masaurhi, District- Patna.

... .. Petitioner/s

Versus

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

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Dhananjaya Nath Tiwari
For the Respondent/s : Mr. Upendra Pratap Singh, AC to SC-4

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

2 12-04-2021 The present petition has been filed seeking quashing of the order dated 06.07.2018 passed by the Sub-Divisional Officer, Masaurhi whereby and whereunder the PDS license of the petitioner bearing License No. 69 of 2016, has been cancelled as also for quashing the appellate order dated 29.06.2020 passed in E.C. Appeal Case No. 29 of 2018-19 by the learned Collector, Patna, wheerby and whereunder the appeal has been dismissed.

The learned counsel for the petitioner submits that a bare perusal of the show cause notice dated 12.06.2018 issued by the Sub-Divisional Officer, Masaurhi would show that the same is contrary to the mandate of clause-27(ii) of the Bihar



Targeted PDS Control Order, 2016 which clearly stipulates that no order of cancellation shall be made until the licensee has been given sufficient opportunity to defend his case against the proposal of cancellation of license, however, the show cause notice dated 12.06.2018 issued to the petitioner does not contain any such proposal for cancellation of license, hence the petitioner has been precluded from submitting his wholesome defence to the proposal of cancellation of license.

In this regard, the learned counsel for the petitioner has relied upon a judgment rendered by the learned Division Bench of this Court dated 10.07.2018 passed in ***L.P.A. No. 499 of 2018 (Ram Bechan Ram Vs. The State of Bihar & Ors)***, relevant paragraphs whereof are reproduced herein below:-

“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 count 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.

Keeping in view the aforesaid, we allow the appeal, quash the order passed by the learned Writ Court on 02.04.2018 in Civil Writ Jurisdiction Case



No.4687 of 2018, quash the cancellation order passed on 20th January, 2018, Annexure-7, direct for restoration of the licence of the petitioner. However, liberty shall be available to the respondents to take action afresh in accordance with law, if so advised.”

Per contra, the learned counsel for the State, Shri Upendra Pratap Singh, AC to SC-4 has not disputed the position as is existing in law.

Having regard to the facts and circumstances of the case and considering the law laid down by the learned Division Bench of this Court in the case of **Ram Bechan Ram** (supra), this Court finds that the show cause notice dated 12.06.2018 is contrary to the provisions contained in clause-27(ii) of the Bihar Targeted PDS Control Order, 2016 inasmuch as it does not mention any proposal for cancellation of the license of the petitioner, hence the petitioner has been precluded from submitting his defence, resulting in violation of the principles of natural justice, hence the impugned order dated 06.07.2018, passed by the Sub-Divisional Officer, Masaurhi as also the appellate order dated 29.06.2020 suffer from material legal infirmity on account of the show cause notice dated 12.06.2018 being contrary to law. Hence, the impugned orders dated 06.07.2018, passed by the Sub-Divisional Officer, Masaurhi as



also the one dated 29.06.2020, passed by the learned Collector, Patna are set aside, however, with liberty to the Sub-Divisional Officer, Masaurhi to proceed afresh, in accordance with law.

The writ petition stands allowed.

(Mohit Kumar Shah, J)

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