

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6942 of 2021

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Rama Shankar Sharma son of Ram Janam Sharma, Resident of Ward no. 11,
Brahampur, Kirkiri, District- Bhojpur

... .. Petitioner/s

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

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjeev Kumar Mishra, Adv
	:	Mrs. Manini Jaiswal, Adv
For the Respondent/s	:	Mr. Arvind Ujjawal, SC-4
	:	Mr. Upendra Pratap Singh, AC to SC-4

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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)

3 15-11-2021 An order dated 26.12.2019 passed by the Sub-Divisional Officer, Sadar Ara-cum-Licensing Authority, whereby petitioner's licence to run PDS shop has been cancelled, has been put to challenge in the present writ application. This application was earlier taken up on 06.10.2021 when following order was passed:

“The petitioner has put to challenge an order dated 26.12.2019, passed by the Sub-Divisional Officer, Sadar Ara, whereby the petitioner's licence to run PDS shop has been cancelled.

Though the petitioner has an



alternative remedy of appeal against the impugned order, learned counsel for the petitioner has submitted that since the said order has been passed in complete violation of principles of natural justice without giving the petitioner show cause notice, despite availability of alternative remedy of appeal, this writ petition is maintainable.

Learned counsel for the petitioner is correct in his submission that if an order is manifestly illegal, the same having been passed in violation of principles of natural justice, a writ petition can be maintained despite there being alternative remedy of appeal available.

Prima facie, the Court is satisfied on reading of the impugned order that no opportunity was given to the petitioner in form of any show cause notice. The Court is, thus, under obligation to maintain this writ application, apparently, because of the licensing authority without adhering to the principles of natural justice and the requirements of Bihar Targeted Public Distribution System (Control) Order, 2016 appears to have passed the impugned order.

Let the Secretary, Food and Civil Supplies, Government of Bihar file an affidavit, which must be sworn by him explaining the circumstance in which such orders are passed by the Sub-Divisional Officers. The affidavit must be filed within four weeks.

List this case on 03.11.2021.”



In compliance of the said order, an affidavit has been filed sworn by the Secretary, Food and Consumer Protection Department, Government of Bihar. It has been admitted in the said counter affidavit that the provisions under the Bihar Targeted Public Distribution System (Control) Order, 2016 [hereinafter referred to as BTPDS (Control) Order] need to be strictly adhered to by all the functionaries including the Licensing Authorities. It has further been stated that the Department has been constantly asking the concerned District Magistrates to ensure that the Sub-Divisional Officers-cum-Licensing Authorities under their jurisdiction strictly follow the provisions under BTPDS (Control) Order and grant reasonable opportunity of hearing by issuance of show cause notice, along with enquiry report, if any, to a Public Distribution System (PDS) licensee under Clause 27(ii) of the Order, before taking any penal action.

It has been stated in paragraph 7 of the counter affidavit that by letter no. 2555 dated 12.07.2021 the Department has directed all the Sub-Divisional Officers-cum-Licensing Authorities in the State of Bihar to follow the provisions under BTPDS (Control) Order by granting reasonable opportunity to the licensees under the provision of Clause 27(ii) of the said Order, before cancellation of licence.

Further, by the letter no. 4560 dated 28.10.2021 the Secretary of the Department has requested all the District Magistrates of the State of Bihar to direct all the concerned Sub-Divisional



Officers-cum-Licensing Authorities to follow the statutory prescriptions under BTPDS (Control) Order before taking any penal action. It has also been mentioned that in the event any Licensing Authority is found to have failed to issue show cause notice to a licensee before cancellation of licence, departmental action against such Sub-Divisional Officer-cum-Licensing Authority should be recommended.

Copy of letter dated 28.10.2021 has been brought on record by way of 'Annexure-D' to the counter affidavit.

In the present case, it is an admitted position that the impugned order has been passed canceling petitioner's licence to run a fair price shop under Public Distribution System without issuing show-cause notice. The impugned order is, therefore, patently illegal, unauthorized having been passed in breach of principles of natural justice, which cannot be sustained. The impugned order dated 26.12.2019 passed by respondent no. - 3 is accordingly set-aside.

The Licensing Authority shall, however, be at liberty to pass an order afresh after following due procedure as prescribed under BTPDS (Control) Order, 2016.

Non-observance of the principles of natural justice and mandatory statutory provisions before taking any adverse or penal action by the authorities exercising quasi-judicial functions has generally serious and at times cascading effects. Apart from generating unavoidable litigations, such non-compliances put in



jeopardy not only the interest of the affected parties but also the State and ultimately the public interest.

We, therefore, observe that the authorities under the State of Bihar must strictly adhere to statutory requirements under BTPDS (Control) Order in the matters of cancellation of licence necessity of which has been emphasized in the direction contained in the letter dated 28.10.2021 issued by the Department under the signature of its Secretary is given effect to in its letter and spirit.

This writ application is accordingly allowed with the aforesaid observation and direction.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

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