

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 9164 of 2020

Vimal Yadav @ Vimal Kumar Yadav S/o Late Jaynarayan Yadav
Resident of Village- Dhamsaina, Ward No.- 3, P.S.- Sour Bazar,
District- Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Food and Consumer Protection Department, Bihar, Patna.
2. The Divisional Commissioner, Koshi Division, Saharsa.
3. The District Magistrate-cum- Collector, Saharsa.
4. The Sub- Divisional Officer, Sadar, Saharsa.
5. The Block Supply Officer, Sour Bazar, Saharsa.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Dhananjaya Nath Tiwari
For the Respondent/s : Mr. Lalit Kishore (AG)

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 23.07.2021

The instant case has been taken up for consideration through the mode of Video conferencing in view of the prevailing situation on account of COVID 19 Pandemic, requiring social distancing.

2. The present petition has been filed for quashing the order dated 17.09.2011 passed by the learned Sub-Divisional Officer, Sadar Saharsa, whereby and whereunder the license of



the public distribution system shop of the petitioner bearing License No. 17/2018 has been cancelled as also the appellate order dated 30.08.2017 passed by the learned Collector-cum-District Magistrate, Saharsa and the order passed by the learned Divisional Commissioner, Koshi Division, Saharsa, whereby and whereunder the Supply Revision Case No. 58 of 2017, has been dismissed by an order dated 04.12.2019.

3. The brief facts of the case are that on 05.05.2011, the Commissioner, Koshi Division had constituted a team for inspection of the PDS shop of the petitioner and upon inspection certain irregularities were found, whereafter an inspection report was submitted to the licensing authority. A show cause was then issued to the petitioner on 25.08.2011 inter alia mentioning therein the various irregularities having been found to have been committed by the petitioner. The petitioner had then filed his show cause reply dated 08.09.2011, however, the Sub-Divisional Officer, Sadar Saharsa by an order dated 17.09.2011 had cancelled the PDS shop license of the petitioner by a cryptic order. The petitioner had filed an appeal, however, the same was also dismissed by the impugned order dated 30.08.2017 leading to the petitioner challenging the same by filing a revision petition bearing Supply Revision Case No. 58 of 2017 but the same was



also dismissed by the impugned order dated 04.12.2019.

4. The learned senior counsel for the petitioner Shri N.K. Agarwal has submitted that the order dated 17.09.2011 passed by the Sub-Divisional Officer, Sadar Saharsa is a cryptic and unreasoned order. Reference in this connection has been made to a judgment rendered by the Hon'ble Apex Court in the case of ***Mahabir Prasad Santosh Kumar vs. The State of UP & Ors., reported in (1970) 1 SCC 764***. The learned senior counsel for the petitioner has further referred to a judgment rendered by the learned Division Bench of this Court in the case of ***M/s. Umesh Chandra Dinesh Kumar vs. The State of Bihar & Ors, reported in 1999 volume 1 BLJ 548*** to submit that any consideration by the appellate authority cannot cure the defect in the original order of the licensing authority in case the same is unreasoned and stands vitiated on account of non-application of mind.

5. Per contra, the learned counsel for the State Shri Alok Ranjan, AC to AAG-5 has submitted that in case this Court feels that the impugned order dated 17.09.2011 is an unreasoned order, then the same can be set aside and the matter can be remanded back to the original licensing authority for re-consideration, however, he submits that another PDS dealer



might have been appointed during the interregnum period.

6. I have heard the learned counsel for the parties and have gone through the materials on record. A bare perusal of the impugned order dated 17.09.2011, passed by the Sub-Divisional Officer, Sadar Saharsa, on the very of it is not only cryptic and does not deal with the defence taken by the petitioner in his show cause reply but no cogent clear and succinct reasons have been furnished in the impugned order dated 17.09.2011 in support of the conclusion arrived at to cancel the PDS license of the petitioner, hence the same stands vitiated in the eyes of law. In this connection reference be had to a judgment rendered by the Hon'ble Apex Court in the case of *Kranti Associates (P) Ltd. v. Masood Ahmed Khan*, reported in (2010) 9 SCC 496, paragraphs No. 15, 24, 25, 47 and 48 whereof are reproduced herein below:-

"15. This Court always opined that the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the "inscrutable face of a sphinx".

24. In *Siemens Engg. and Mfg. Co. of India Ltd. v. Union of India* [(1976) 2 SCC 981 : AIR 1976 SC 1785] this Court held that it is far too well settled that an authority in making an order in exercise of its quasi-judicial function,



must record reasons in support of the order it makes. The learned Judges emphatically said that every quasi-judicial order must be supported by reasons. The rule requiring reasons in support of a quasi-judicial order is, this Court held, as basic as following the principles of natural justice. And the rule must be observed in its proper spirit. A mere pretence of compliance would not satisfy the requirement of law (see SCC p. 986, para 6 : AIR p. 1789, para 6).

25. In *Maneka Gandhi v. Union of India* [(1978) 1 SCC 248 : AIR 1978 SC 597] which is a decision of great jurisprudential significance in our constitutional law, Beg, C.J. in a concurring but different opinion held that an order impounding a passport is a quasi-judicial decision (SCC p. 311, para 34 : AIR p. 612, para 34). The learned Chief Justice also held, when an administrative action involving any deprivation of or restriction on fundamental rights is taken, the authorities must see that justice is not only done but manifestly appears to be done as well. This principle would obviously demand disclosure of reasons for the decision.

47. Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice



must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been



objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or “rubber-stamp reasons” is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor [(1987) 100 Harvard Law Review 731-37].)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain [(1994) 19 EHRR 553] EHRR, at 562 para 29 and Anya v. University of



Oxford [2001 EWCA Civ 405 (CA)] , wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

“adequate and intelligent reasons must be given for judicial decisions”.

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of “due process”.

48. For the reasons aforesaid, we set aside the order of the National Consumer Disputes Redressal Commission and remand the matter to the said forum for deciding the matter by passing a reasoned order in the light of the observations made above. Since some time has elapsed, this Court requests the forum to decide the matter as early as possible, preferably within a period of six weeks from the date of service of this order upon it."

7. Having regard to the facts and circumstances of the case and for the reasons stated herein above, the impugned order dated 17.09.2011 passed by the Sub-Divisional Officer, Sadar Saharsa, being vitiated in the eyes of law, stands quashed. As a consequence of quashing of the original order dated 17.09.2011 passed by the Sub-Divisional Officer, Sadar Saharsa, the appellate order dated 30.08.2011 passed by the learned Collector-cum-District Magistrate, Saharsa and the order dated 04.12.2019



passed by the learned Divisional Commissioner, Koshi Division, Saharsa, have got no legs to stand, hence are also set aside. The matter stands remanded back to the Sub-Divisional Officer, Sadar Saharsa, with liberty to pass a reasoned order, in accordance with law.

8. It is needless to state that the restoration of the PDS license of the petitioner shall be subject to the fresh order to be passed by the Sub-Divisional Officer, Sadar Saharsa.

9. The writ petition stands allowed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	03.08.2021
Transmission Date	

