

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8262 of 2020

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Prem Singh S/o Mung Lal Singh Resident of Village- Ajda, P.S.- Paliganj,
District- Patna.

... .. Petitioner

Versus

1. The State of Bihar Through the Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Patna.
2. The District Magistrate Patna.
3. The Sub Divisional Officer Patna.
4. The Block Supply Officer Paliganj, Patna.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Amarnath Singh, Advocate with
	:	Mr. Binay Kumar
For the Respondents	:	Mr. Arvind Ujjwal (SC 4)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 27-07-2021

This matter has been taken up for hearing online because of COVID-19 pandemic restrictions.

2. The petitioner has put to challenge an order dated 19.01.2019 passed by the Sub-Divisional Officer-cum-Licensing Authority, Patna, whereby the petitioner's license to run a PDS shop under Bihar Targeted Public Distribution System (Control) Order, 2016 (hereinafter referred to as the BTPDS (Control) Order, 2016) has been cancelled. Indisputably, the petitioner had remedy of appeal against the said order, which he has not availed nor any inclination has been shown during the course of hearing of this case to avail the said alternative remedy.



3. The license to run a PDS shop was granted to the petitioner in 2016. During the course of inspection conducted by the Block Supply Officer, Paliganj on 16.10.2018 of the petitioner's shop, certain irregularities were detected and accordingly a report was submitted by him to the licensing authority pointing out following irregularities:-

- i) *No register was produced by the petitioner during the course of inspection.*
- ii) *The petitioner was found to have lifted food grains for distribution among the beneficiaries on 11.10.2018, for the month of October but it was found that till the date of inspection on 16.10.2018, no food grain was distributed.*
- iii) *On perusal of the Ration Cards of the beneficiaries it was noticed that the entries were made even in respect of December, 2018 which were apparently fake.*
- iv) *The petitioner would not issue cash memos to the beneficiaries.*
- v) *The list of beneficiaries was not displayed at proper place.*

4. The petitioner informed the Block Supply Officer, Paliganj that the food grain for the month of October, 2018 had already been distributed but no document was shown in support thereof.

5. Taking into account the irregularities reported by the Block Supply Officer, the Sub-Divisional Officer, Paliganj put the petitioner on show cause notice vide Memo No. 476 dated 20.08.2018 asking the petitioner to show cause as to why his



license be cancelled as the said irregularities were in breach of Clause 14 (viii), 14 (xi) of the BTPDS (Control) Order, 2016. The petitioner filed his reply on 28.12.2018, a copy of which has been brought on record by way of Annexure-2 to the writ application.

6. From the opening paragraph of the said reply it appears that the petitioner admitted that on the date of inspection, i.e., 16.10.2020, because of *Dussehra Puja*, no consumer had come to the shop though distribution of food grains was made for two hours in the morning. In respect of not furnishing the distribution registers and other registers, he disclosed that they were kept under lock and key in an *almirah* and the key was with the brother of the petitioner, who had gone to visit *Dussehra* celebrations. The show cause itself disclosed that the petitioner had failed to produce before the inspecting authority the registers which he was required to maintain. Further, though he denied incorrect entry in the ration cards, but, at the same time, he admitted that because of human error wrong entries might have been made in some of the ration cards. He also stated that the list of consumers was placed there inside the shop which might have gone unnoticed by the inspecting authority. In relation to the complaint about non-distribution of food grains, the petitioner took a plea that other members of the family of such complainants had obtained food



grains and other materials and because the complainants did not have the knowledge about the same, allegation of non-distribution of food grains was made.

7. The licensing authority by an order dated 05.12.2018 cancelled the petitioner's license. The petitioner approached this Court by filing a writ petition giving rise to C.W.J.C. No. 2848 of 2019, which was allowed by an order dated 18.06.2019 mainly on the ground that the licensing authority did not deal specifically with the stand of the petitioner while rejecting his show cause reply and passing the order of cancellation. This Court by the aforesaid order remanded the matter back to the licensing authority to reconsider the entire matter afresh on the basis of materials on record. The Court further observed that the grounds set forth by the petitioner in his show cause shall be duly considered with reference to the materials which may be produced by him. The whole exercise shall be completed within a period of three months from the date of receipt/production of a copy of the said order, the Court said.

8. In compliance of the said order dated 18.06.2019, the licensing authority has passed the impugned order dated 19.10.2019.



9. Mr. Amarnath Singh, learned counsel appearing on behalf of the petitioner has made two fold submissions. He has submitted that as was done previously, this time also the licensing authority has cancelled the license without recording cogent reasons. He has accordingly submitted that the impugned order being non-speaking requires interference. In support of this contention, he has relied on decisions of coordinate Bench of this Court vide order dated 25.03.2021 passed in C.W.J.C. No. 26343 of 2019 and order dated 28.11.2019 passed in C.W.J.C. No. 23379 of 2019. He has secondly submitted that the licensing authority, while passing the impugned order dated 19.08.2019, has maintained the previous order of cancellation of license dated 16.12.2018, which was quashed by this Court by order dated 18.06.2019 passed in C.W.J.C. No. 2848 of 2019.

10. I must note here, at the cost of repetition, that when it was pointed out to learned counsel representing the petitioner that the petitioner could have availed the remedy of appeal before approaching this Court, he has contended that there was no such requirement, the impugned order itself being non-speaking and unreasoned.

11. I have carefully perused the impugned order. I am of the view that the impugned order cannot be said to be unreasoned



or non-speaking. The impugned order discloses that the licensing authority found the petitioner's explanation in his show cause to be unsatisfactory and fictitious. He has further recorded a finding that the P.D.S. dealer had made false entries in the ration cards without distribution of the food grains amongst the beneficiaries. Such finding was not there in the earlier order dated 05.12.2018. After having recorded the said finding, the licensing authority has taken the decision to cancel the petitioner's license.

12. After having noticed that the impugned order cannot be said to be so unreasoned as to require this Court's interference under Article 226 of the Constitution of India, I could have dismissed this writ application as not maintainable on the ground of availability of alternative remedy, which the petitioner refused to invoke before approaching this Court by filing the present writ application. However, I have considered it apt to look into the nature of explanation submitted by the petitioner in response to the show cause notice so as to examine the tenability of the petitioner's challenge to the impugned order of cancellation of license. It has already been noted hereinabove that admittedly the petitioner did not produce the books and records relating to the allotments and distribution of food grains and other commodities as directed by the inspecting authority. His defence, in the show



cause reply, that all such documents were under lock and key in an *almirah* and the key had been taken away by his brother and, therefore, could not be produced before the inspecting authority, to this Court also appears to be a concocted story. This is to be noted that the inspection was done, as is evident from Annexure-1, at 12.30 PM. Rule 15 of the BTPDS (Control) Order, 2016 prescribes the working period to be 8 AM to 2 PM from September to February. The petitioner was, therefore, under an obligation to keep the shop open for all purposes during the working hour including for the purpose of inspection. Rule 14(8) of BTPDS (Control) Order, 2016 casts a duty upon the licensee to produce the book and records relating to allotment of food grains and other commodities as directed by the inspecting officers. It is the petitioner's admitted case that he had failed to produce the same.

13. Noticing an order passed by the Supreme Court in Civil Writ No. 196 of 2001, provision has been made under Rule 25 of the BTPDS (Control) Order, 2016 for action against licencees in certain circumstances including in case of making false entries in B.P.L. ration cards. It has been provided in the said Rule, following the observation of the Supreme Court, that such lapse on the part of the P.D.S. dealers shall make themselves liable



for cancellation of their license and the concerned authorities will not show any laxity on the subject.

14. This is to be kept in mind that BTPDS (Control) Order, 2016 has been issued for implementation of National Food Security Act, 2013, which has been enacted to provide for food and nutritional security in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity and for matters connected therewith or incidental thereto. Targeted Public Distribution System (TPDS) incorporates and envisions a system for distribution of essential commodities to the ration card holders through fair price shops. Section 3 of the National Food Security Act confers on the beneficiaries a statutory right to receive food grains at subsidized price who are the persons belonging to eligible house hold under TPDS. The Act has been evidently enacted to protect right to life guaranteed under Article 21 of the Constitution of India and has introduced various reforms through TDPS.

15. Such being the salutary purpose of the National Food Security Act, 2013 and BTPDS (Control) Order, 2016, lapse of the nature, alleged against the petitioner, could not have been taken lightly. In the Court's opinion, provisions under the BTPDS (Control) Order, 2016 will have to be strictly enforced for proper



and effective implementation of the National Food Security Act, 2013.

16. In my opinion, the decision to cancel the petitioner’s license in the background of the facts noticed above does not require interference by this Court exercising equitable writ jurisdiction under Article 226 of the Constitution of India.

17. This writ application is accordingly dismissed.

18. There shall, however, be no order as to cost.

(Chakradhari Sharan Singh, J)

Pawan/Akash-

AFR/NAFR	NAFR
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