

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7527 of 2020

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Lalpari Devi, Wife of Late Rajendra Chouhan, Resident of Village-Teloundha,
P.S.- Dhoraiya, District-Banka

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Patna.
2. The District Magistrate-cum-Collector, Banka.
3. The Licensing Authority-cum-Sub-Divisional Officer, Banka, District-Banka.
4. The Assistant District Supply Officer, Banka, District-Banka.
5. The Block Supply Officer, Dhoraiya, District-Banka.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Pramod Mishra, Advocate
For the Respondent/s : Mr.Prashant Pratap, G.P.-2

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 10-02-2021

Heard learned counsel for the petitioner and the learned

State Counsel.

2. The petitioner was a P.D.S. dealer. The P.D.S. licence of the petitioner has been cancelled on 12.05.2016 by the Sub-Divisional Officer, Banka. The appeal against the said order was preferred before the District Magistrate under the provisions of the Bihar Targeted Public Distribution System (Control) Orders, 2016. The same has also been rejected under order dated 06.12.2016.

3. The petitioner's counsel submits that such an order visiting the petitioner with the extreme civil consequence of cancellation of her PDS licence is without affording an opportunity



to the petitioner to respond to the enquiry report dated 19.03.2016, which has been referred to and relied upon by the Sub-Divisional Officer in the impugned order.

4. This Court finds that the petitioner was afforded an opportunity of responding to the allegations only in respect of the show cause dated 18.02.2016. After the petitioner submitted her response on 02.03.2016, it appears that the Sub-Divisional Officer has got an enquiry conducted by the Block Supply Officer. The report of the Block Supply Officer is subsequent to the petitioner's response to the show cause and the same is dated 19.03.2016, which has been referred to and relied upon by the Sub-Divisional Officer in the impugned order.

5. Against the said order, the petitioner had approached this Court earlier. The writ petition, bearing C.W.J.C. No.4146 of 2019, filed by the petitioner (Annexure 4) was disposed of with liberty to the petitioner to avail the alternative remedy of appeal before the District Magistrate. It is in the circumstance that the appeal, bearing Appeal No.48/2016-17, was preferred by the petitioner before the District Magistrate, Banka. Rather than remedying the said wrong, the District Magistrate seems to have referred to and relied upon a third report which is dated 14.10.2016. The fact is taken note of in the order passed by the



District Magistrate that a joint enquiry was conducted by the Block Supply Officer and in support of the same, a report dated 14.10.2016 was submitted under Memo No.1487.

6. There is nothing on record to suggest that the third report was ever served on the petitioner. The order of the Sub-Divisional Officer dated 12.05.2016 cancelling the petitioner's PDS licence and the order of the District Magistrate dated 06.12.2016 passed in Appeal No.48/2016-17, both, suffer from the same vice of non-compliance of the principles of natural justice. The report dated 19.03.2016 and the report dated 14.10.2016 were never made available to the petitioner.

7. The counsel for the State has submitted that the petitioner has a remedy of revision before the competent authority.

8. It is trite law that when an order is passed in violation of the principles of natural justice, it is one of the circumstances when the Court may interfere.

9. Recent judgment of this Court in the case of ***Nagendra Prasad Gupta Vs. The State of Bihar & Ors.***, in CWJC No.8769 of 2020 disposed of on 13.01.2021, relying upon the judgments of the Apex Court in ***Union of India Vs. Tania Construction (P) Ltd. [(2011) 5 SCC 697]***, ***M.P. State Agro Industries Development Corporation Ltd. Vs. Jahan Khan***



[(2007) 10 SCC 88], L.K. Verma Vs. H.M.T. Ltd. [(2006) 2 SCC 269], supports the view in this regard, which this Court is inclined to take.

10. The order of the Sub-Divisional Officer dated 12.05.2016 and the order of the District Magistrate, Banka dated 06.12.2019, therefore, are liable to be quashed on this ground alone. This Court would therefore quash these two orders.

11. The writ petition stands allowed. The respondent-authorities shall not be precluded from proceeding against the petitioner, in accordance with law. The petitioner, however, would be entitled to consequential benefits on account of quashing of the impugned orders.

12. This Court would expect that the petitioner’s counsel would honour his undertaking in the instant proceedings regarding supply of the requisite court fee etc. within two weeks from the date he is called upon to do so by the office.

(Madhuresh Prasad, J)

PNM

AFR/NAFR	
CAV DATE	N.A.
Uploading Date	
Transmission Date	N.A.

