

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7382 of 2019

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Tarkeshwar Baitha S/o Mahendra Baitha Resident of Village- Jalalpur, P.S.-
Muffasil, District- Saran.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Secretary, Food and Consumer Protection Department, Government of Bihar, Patna.
2. The Collector Saran at Chapra.
3. The Sub Divisional Officer Sadar, Chapra.
4. The Block Supply Officer Sadar, Chapra.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Dhananjaya Nath Tiwari
For the Respondent/s : Mr.S, Raza Ahmad (AAG-5)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

9 06-07-2021 This matter has been taken up for hearing online because of COVID-19 pandemic restrictions.

2. The petitioner is seeking quashing of an order dated 09.03.2019 passed by the Sub-Divisional Officer, Sadar, Chapra in exercise of power under Rule 27 of Bihar Targetted Public Distribution System(Control), Order 2016 (hereinafter referred to as ‘the Control Order 2016’), whereby, he has cancelled the license of the petitioner *vide* License No. 45 of 2016 to run the PDS shop.

3. From the facts which has emerged from the



pleadings on record, it is not in dispute that a show cause notice was earlier issued to the petitioner, seeking his explanation for taking appropriate action under the Control Order 2016, in the wake of certain irregularities detected in course of inspection of the petitioner's shop. The petitioner had submitted his reply. By an order dated 05.01.2018, the Sub-Divisional Officer, Sadar, Chapra had cancelled the petitioner's licence. The petitioner had preferred an appeal before the Collector, Saran, which was dismissed by an order dated 10.09.2018. The petitioner, thereafter, filed a writ application, giving rise to CWJC No. 23080 of 2018, which was disposed of by an order dated 21.12.2018, setting aside the order passed by the appellate authority as well as Sub-Divisional Officer. The matter was, however, remanded back to the Sub-Divisional Officer, Chapra, the licensing authority, with a liberty to proceed further, in accordance with law.

5. In view of the liberty granted by this Court by order dated 21.12.2018 passed in CWJC No. 23080 of 2018, the Sub-Divisional Officer passed the order, which is impugned in the present writ application.

6. Learned counsel appearing on behalf of the petitioner has submitted that the impugned order is in breach of



mandatory requirement under Rule 27 of the 2016 Control Order, which mandates that no order of cancellation of a license shall be made until the licensee had been given sufficient opportunity to state his case against “the proposal for cancellation of his licence”. He has submitted that notice does not indicate any proposal of cancellation of license though speaks of taking appropriate action but not cancellation of licence. He has drawn my attention to the show cause notice, which was issued on 06.05.2017, which does not disclose any proposal for cancellation of licence. He has relied on a Division Bench decision of this Court in case of **Ram Bachan Ram Vs. the State of Bihar and ors** reported in **2018(4) PLJR 516**, in support of his plea that proposal ought to have have been disclosed in the notice itself before cancelling the license in exercise of power under Rule 27 of 2016 Orders.

7. Learned counsel appearing on behalf of the State of Bihar has submitted that this writ application should not be entertained as the petitioner has failed to avail statutory remedy of a appeal against the impugned order.

8. Learned counsel for the State has also submitted that the writ petition is barred by constructive *res-judicata* inasmuch as the plea of absence of proposal as taken with



reference to Rule 27 of 2016 Control Order was not taken in the previous writ petition. He has submitted that for the said reason also, this writ petition deserves to be dismissed. I do not find much force in the aforesaid submission for the reason that this Court had considered it appropriate by order dated 21.12.2018 passed in CWJC No. 23080 of 2018 to grant a liberty to the Sub-Divisional Officer to pass an order afresh, in accordance with law. Since the Sub-Divisional Officer has not passed the order, which can be said to be in accordance with law by following strict provision under Rule 27 of 2016 Order, the doctrine of *res-judicata* shall have not application.

9. Be that as it may, there being undisputed fact that there has been non-compliance of mandatory provisions under Rule 27 of 2016 order, which has the effect of blatant violation of principles of natural justice, I am not inclined to entertain the objection on maintainability of the writ application on the ground of availability of statutory remedy of appeal. Since the order, in Court's opinion, is unauthorized and illegal on the face of it, the same requires interference.

10. This application is, accordingly, allowed. The impugned order dated 09.03.2019 is set aside.

11. The Sub-Divisional Officer shall be at liberty to



put to petitioner on notice disclosing proposal for cancellation of license, if the licensing authority intends to take action against the petitioner in terms of Ruler 27 of the Control Order.

(Chakradhari Sharan Singh, J)

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