

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8349 of 2020

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Khushi Lal Prasad Son of Nakchhed Sah Resident of Village- Athmohan, P.S.-
Jharaukhar, District- East Champaran

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection Department, Old Secretariat, Patna.
2. The District Magistrate, East Champaran.
3. The Sub- Divisional Officer, Sikrahna, Dhaka, District- East Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rajeev Kumar Labh, Adv.
For the Respondent/s : Mr. Alok Ranjan AC to AG

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 07-01-2021

Heard learned counsel for the petitioner and learned
counsel for the respondent-State.

The petitioner's Public Distribution System license
has been cancelled by the impugned order dated 16.04.2020. The
petitioner has approached this Court seeking quashing of the said
order.

The short submissions advanced by the petitioner's
counsel is that no show cause notice was served on the petitioner
prior to passing of the impugned order. The order visiting the
petitioner with civil consequences is without any basis as neither
any show cause has been issued nor he has been allowed
opportunity to say anything or be heard in the matter before
passing of the impugned order by the Sub-Divisional Officer,



Sikrahna. The Court had, earlier, granted time to the State for filing counter affidavit. The counter affidavit has been filed.

The learned counsel for the State has submitted that the petitioner has adequate alternative remedy and without exhausting the same, he has rushed to this Court. He further submits that Annexure- C dated 16.04.2020, is the show cause which was sent to the petitioner. The extract of the Peon Book has also been enclosed as Annexure- D to the counter affidavit and it is submitted that the Peon had reported that after seeing the show cause notice, the petitioner refused to accept the same and, therefore, the impugned order has been passed. The petitioner has not availed of the opportunity granted to him under Annexure- C dated 16.04.2020 and, therefore, a grievance cannot be raised that the order is without any show cause or opportunity to the petitioner. Learned counsel further submits that bare perusal of the show cause notice dated 16.04.2020 would show that it allowed the petitioner opportunity to place his response before the Sub Divisional Officer on the very same day by 4 PM in the afternoon. He further denies and disputes the report submitted by the Peon (Annexure -D to the counter affidavit). It is his specific assertion that the show cause notice was never served to him.



On consideration of the rival submissions, this Court would observe that whether the Peon made efforts to serve notice on the petitioner or not and whether he refused to accept the same is a disputed question of fact. This Court would not embark on determination of this disputed issue.

Having said so, this Court would further observe that from Annexure- C brought on record by the State itself it is apparent that the show cause notice was issued on 16.04.2020, asking the petitioner to submit his show cause in respect of some allegation ranging from January, 2020 till April 2020. The petitioner was also required to place the Registers and documents in connection with the business of Public Distribution System being carried on by him. All these things were required to be done under the notice by 4 PM on the same very day. Even if the notice had been served on the petitioner then, by no stretch of imagination, it can be considered to be an opportunity offered to the petitioner. Such notice would not subvert the principle of natural justice.

In this connection, this Court would also consider the provisions of Rule 27 of the Bihar Targeted Public Distribution System (Control) Order, 2016 (hereinafter referred to as the



‘Control Order’). Rule 27 deals with Cancellation of License. Rule 27(ii) clearly stipulates as follows:-

“27(ii) No order of cancellation of a license shall be made until the licensee has been given sufficient opportunity to state his case against the proposal of cancellation of his license.”

Even the Rule, under which, the Authority can cancel the license contemplates grant of sufficient opportunity of stating the case. The facts taking note of above, cannot be considered to conclude that sufficient opportunity has been afforded to the petitioner in terms of Rule 27(ii) of the Control Order.

The facts are clear from the pleadings that a show cause notice, even if served, was only allowing the petitioner, at best, half a days time to submit his response to the same. To add to the injuries, this Court would also take notice of the fact that on the very same day i.e., 16.04.2020 the order cancelling the petitioner’s license has also been issued by the Sub Divisional Officer. The facts are such that there is irresistible conclusion that the Authorities has acted in haste. No sufficient opportunity has been granted to the petitioner and the manner, in which, the order has been passed gives rise to a reasonable likelihood of predisposition in the mind of the Sub Divisional Officer, who has passed the order dated 16.04.2020.



In view of these facts, this Court would hold that the order of the Sub Divisional Officer dated 16.04.2020 cancelling the license of the petitioner is clearly unsustainable as being violative of the principle of natural justice. The order is not in accordance with the procedure prescribed in the Statute. In view of these two findings, this Court is inclined to quash the order dated 16.04.2020 cancelling the petitioner's Public Distribution System license.

Learned counsel for the petitioner submits that petitioner is willing to submit his response to the show cause notice dated 16.04.2020 within a period of one (01) week. If the same is done, the respondent No 3 (The Sub- Divisional Officer, Sikrahna, Dhaka, Dist. East Champaran) shall proceed to consider the same and pass a reasoned order in accordance with law.

With the aforesaid directions, the application stands allowed.

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	NAFR
CAV DATE	N/A
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