

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7451 of 2020

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Upendra Ojha Son of Bhrath Nath Ojha, resident of Ward No. 2 Semariya
Patti Ojha, P.S. Shahpur Bhojpur Ara.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection, Government of Bihar, Patna.
2. The District Magistrate Bhojpur.
3. Sub Divisional Officer, Jagdishpur Ara Bhojpur.

... .. Respondent

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Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar Mishra, Adv.
For the Respondent/s : Mr. Vikash Kumar, SC-11

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 21-01-2021

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

2. By way of the instant writ petition preferred under
Section 226 of the Constitution of India, the petitioner has
prayed for quashing the order contained in memo no. 850 dated
21.04.2018 passed by the respondent no. 3 by which the P.D.S.
licence no. 29 of 2016 of the petitioner has been cancelled.

3. Mr. Sanjeev Kumar Mishra, learned counsel for the
petitioner submitted that the petitioner was a PDS license dealer
and was discharging his duties to the full satisfaction of his
beneficiaries. However, vide impugned order contained in
memo no. 850 dated 21.04.2018, the respondent no. 3 cancelled



his license without issuing any notice to the petitioner in this regard. He contended that under Rule 27 of the Bihar Targeted Public Distribution System (Control) Order, 2016 (for brevity 'PDS Control (Order), 2016'), it is provided that cancellation of a license cannot be made until the licensee has been given sufficient opportunity to state his case against the proposal of cancellation of his license.

4. In reply, learned counsel appearing for the State submitted that the writ petition filed by the petitioner is not maintainable. He contended that under PDS Control (Order), 2016, there is statutory provision for appeal. Since the petitioner has not availed of the statutory remedy of appeal, the writ petition is fit to be dismissed. He further contended that the order impugned would indicate that in course of inspection of the PDS shop of the petitioner made on 21.04.2020, several irregularities were found, pursuant to which, the order impugned was passed by the respondent no. 3.

5. In reply, learned counsel appearing for the petitioner submitted that the order impugned passed by the respondent no. 3, is in complete violation of the principle of natural justice. Since the order impugned suffers from material legal infirmity, the petitioner should not be relegated to take



recourse to the statutory remedy of appeal provided under PDS Control (Order), 2016. He contended that under the similar circumstance, when writ petition was dismissed by a learned Single Judge of this Court directing the petitioner to take recourse to the statutory remedy of appeal under the PDS Control (Order), 2016, the Division Bench vide order dated 10.07.2018 passed in **L.P.A. No. 499 of 2018 (Ram Bachan Ram Vs. The State of Bihar & Ors.)** quashed the order passed by the learned Single Judge and allowed the appeal.

6. Having heard the parties and perused the materials on record, this Court is satisfied that the order impugned has been passed by the respondent no. 3 in violation of the principles of natural justice and completely ignoring Rule 27 of the PDS Control (Order), 2016 which reads as under:

“27 Cancellation of License:- (i) if a licensee violates any provision of this Order or fails to comply duties and responsibilities assigned to the license, his license shall be cancelled by the licensing authority by a written order, and such a cancellation of license shall not affect other actions initiated/initiable under the Essential Commodity Act, 1955 (Central Act 10 of 1955).



(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.

(iii) The cases of violation of the provisions of this Order shall be disposed of within two months, as far as possible, after coming in cognizance as for.

7. Since, no opportunity was given to the petitioner to state his case against the proposal of the cancellation of licence, the decision made in the proceeding stands vitiated.

8. As the order impugned has been passed to the prejudice of the petitioner without affording any opportunity of hearing, which amounts to without considering his defence, the petitioner cannot be relegated to the statutory remedy of appeal.

9. Accordingly, order impugned dated 21.04.2018 passed by the respondent no. 3 (Sub Divisional Officer Jagdishpur, Ara Bhojpur) is, set aside.

10. Respondent no. 3 is directed to issue show cause notice to the petitioner annexing a copy of the inquiry report against the proposal of cancellation of license within 15 days from the date of receipt/production of a copy of the order. He



shall also be required to dispose of the proceeding against the petitioner within two months in terms of Clause (iii) of Rule 27 of the PDS Control (Order), 2016.

11. With the aforesaid observation and direction, the writ petition is disposed of.

(Ashwani Kumar Singh, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25-01-2021
Transmission Date	NA

