

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8297 of 2020

Sunil Kumar Gupta Son of Late Kusum Chandra Prasad Gupta Resident of
Village- Purani Arwal Ward no 14, P.S. Arwal, District- Arwal.

... .. Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Arwal.
2. The Sub- Divisional Officer, Arwal, Dist. Arwal.
3. The Block Supply Officer Arwal, District- Arwal.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. N. K. Agrawal, Sr. Advocate
Mr. Manoj Kumar Pandey, Advocate
Ms. Preety Kunwar, Advocate

For the Respondent/s : Mr. Upendra Pratap Singh, A.C. to S.C.-4.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL JUDGMENT

Date : 25-02-2021

Heard Mr. N.K. Agrawal, learned senior counsel for the
petitioner and Mr. Upendra Pratap Singh, learned A.C. to Standing
Counsel No.-4 for the State.

The present writ application has been filed for quashing
the order as contained in Memo No.637 dated 27.02.2020 passed
by Sub-Divisional Officer, Arwal by which the P.D.S. Licence No.
022 of 2010 of the petitioner has been cancelled by respondent
No.2 on the ground of proven irregularity.

The brief fact giving rise to the present writ application
is that the petitioner is a P.D.S. shop holder of Arwal Nagar



Parishad Ward No. 14, Block Arwal, within the district of Arwal. It has been stated in the writ application as well as the supplementary affidavit filed on behalf of the petitioner that S.D.O., Arwal issued show cause dated 30.11.2019 for the alleged irregularity and further issued another show cause on 15.01.2020 for a certain irregularity which was duly replied by the petitioner on 21.01.2020. It has further been stated that in the impugned order, the S.D.O., Arwal has relied upon the statements of the consumers recorded on 06.02.2020 and complaint dated 10.02.2020 by the Coordinator of Ward Panchayat Nigrani Samiti but no show cause notice was ever served on these two complaints. It has further been stated that the S.D.O., Arwal while passing the impugned order did not apply his independent mind and sent the show cause filed by the petitioner and other material to the Block Supply Officer, Arwal for his opinion and opinion given by the Block Supply Officer, Arwal was not made available to the petitioner.

Further case of the petitioner is that the P.D.S. license of the petitioner has been cancelled by respondent No.2 on the ground of proven irregularity without considering the show cause filed by the petitioner and without furnishing the copy of the enquiry reports, statements of the consumers recorded on



06.02.2020 as well as the complaint dated 10.02.2020 of the Coordinator, Panchayat Nigrani Samiti inasmuch as the respondent No.2 has relied upon the aforesaid documents while passing the impugned order.

No counter affidavit has been filed by the State despite having granted time to file counter affidavit by order dated 07.10.2020 and 07.01.2021.

Learned senior counsel for the petitioner submits that for alleged irregularity based upon the surprise inspection dated 30.11.2019, a show cause was served upon the petitioner which was duly replied on 21.01.2020. He further submits that on 14.01.2020, complaint was lodged against the petitioner by one Asmat Khatoon and others that in the month of December, 2019 they were not provided foodgrains by the petitioner for which an enquiry was directed to be held by Block Supply Officer, Arwal on 15.01.2020. On 06.02.2020 the statement of the beneficiaries were recorded in front of S.D.O., Arwal and from their statement, it transpired that less quantity of foodgrains was being provided by the petitioner to the beneficiaries and excess payment was being received by him. It has further been argued that another complaint was received from the Panchayat Vigilance Committee dated 10.02.2020 to the effect that petitioner has misappropriated the



foodgrains for the month of December, 2019. Accordingly, the respondent No.2, S.D.O., Arwal sought the opinion of the Block Supply Officer, Arwal upon the complaint against the petitioner made by beneficiaries and others.

Learned senior counsel for the petitioner further submits that the respondent No.2 while passing the impugned order has not applied his independent mind and has passed the order of cancellation of P.D.S. license of the petitioner based upon the opinion of the Block Supply Officer, Arwal which according to the petitioner was sought from him on the complaint made and enquiry conducted behind the back of the petitioner.

Learned senior counsel while assailing the impugned order submits that the complaint regarding non-supply of foodgrains and excess payment allegedly received by the petitioner and further statement of beneficiaries made before respondent No.2 and also enquiry report were not made available to the petitioner before passing the impugned order and only show cause based upon the surprise inspection dated 30.11.2019 and show cause dated 15.01.2020 were served upon the petitioner and reply to the same was submitted by him on 21.01.2020. Learned senior counsel further submits that the respondent No.2 while passing the impugned order has taken into consideration the materials which



were not made available to the petitioner for his comment or explanation at any point of time.

Learned senior counsel also submits that respondent No.2 did not apply his independent mind while passing the impugned order and abdicated his statutory power inasmuch as he has arrived at the conclusion of cancellation of the PDS license of the petitioner based upon the opinion of subordinate Officer and a copy of said opinion was not provided to the petitioner before passing the impugned order. Learned senior counsel in support of his argument relied upon an order passed by a Coordinate Bench of this Court in C.W.J.C. No.2090 of 2019 dated 22.04.2019. Learned counsel further submits that reply to the show cause submitted by the petitioner has not been considered properly and no reason has been assigned while passing the impugned order and the same is non-speaking and cryptic.

On the other hand, learned counsel for the State submits that there is a provision for statutory appeal against the impugned order of cancellation of P.D.S. license and the petitioner may be relegated to the remedy of appeal before the appellate authority.

I have heard learned counsel for the parties and have gone through the materials on record. It appears from the impugned order that show cause was issued to the petitioner



pursuant to the surprise inspection dated 30.11.2019 which the petitioner duly replied vide his reply dated 21.01.2020. It further appears that thereafter various complaints were made by different persons and beneficiaries upon which an enquiry was ordered by the competent authority and enquiry report was submitted and the statement of the beneficiaries were also recorded in front of the licensing authority, i.e., respondent No.2, Sub-Divisional Officer, Arwal but neither the copy of the enquiry report and / or opinion sought for by respondent No.2 upon the enquiry report submitted by various authorities and the statement of beneficiaries were not provided to the petitioner giving him opportunity to submit his explanation/reply.

Accordingly, this Court comes to the conclusion that the impugned order has been passed in complete violation of principle of natural justice and displays non-application of mind. As such the impugned order contained Memo No.637 dated 27.02.2020, at Annexure-1, is hereby quashed and the matter is remanded back to Sub-Divisional Officer, Arwal, respondent No.2, for passing fresh order after furnishing all the materials and enquiry report and statement of respective beneficiaries to the petitioner. The relevant materials shall be furnished to the petitioner within a period of three weeks from the date of receipt / production of a copy of this



order and upon receipt of the explanation / reply of the petitioner within four weeks thereafter, the respondent No.2 shall pass a reasoned order within a further period of 90 days.

It is made clear that till the fresh order is passed by Sub-Divisional Officer, Arwal, respondent No.2, the status quo as of today shall be maintained and the interim arrangement, if any, shall continue.

This writ application is, accordingly, disposed of in the aforesaid terms.

(Anil Kumar Sinha, J)

sanjeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05/03/2021
Transmission Date	NA

