

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8449 of 2020

Pradip Kumar Paswan, Son of Ram Prasad Paswan, Resident of Village Samoul, Block Rahika, P.S. Madhubani, District Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary, Food and Consumer Protection, Government of Bihar, Patna.
2. The District Magistrate, Madhubani.
3. The Sub Divisional Officer Sadar, Madhubani.
4. The Block Supply Officer, Rahika, District Madhubani.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Manoj Kumar Jha, Advocate
For the Respondent/s : Mr. Prashan Pratap GP-2

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 04-03-2021

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

2. The petitioner, who is a Public Distribution System licensee, has approached this Court seeking quashing of order dated 22.08.2020 under memo No. 561 whereby and whereunder the Sub Divisional Officer, Sadar, Madhubani (hereinafter referred to as the “SDO”) has cancelled the PDS license of the petitioner bearing PDS license No. 44 of 2017 on the alleged ground of violation of certain provisions of the Bihar Targeted Public Distribution System (Control) Order 2016 (hereinafter referred to as the “Targeted Control Order”)

3. The brief facts are that the Block Supply Officer, Rahika visited the petitioner’s shop on 16.05.2020 to conduct an inspection of his PDS dealership. An inspection report has been submitted in respect of the inspection by the Block Supply Officer, under letter dated 08.06.2020, bearing letter No. 60 to the



SDO. Based on this inspection report, the SDO issued a show cause notice to the petitioner on 16.06.2020, asking him to reply within 48 hours with respect to 06 allegations which were as follows:-

- (i) Shop was found closed.
- (ii) The weights and measure license was not valid.
- (iii) Notice Board did not display the requisite information.
- (iv) Beneficiaries were not being made available the foodgrains on Government determined rates and weight (quantity).
- (v) Beneficiaries were being given foodgrains on two months.
- (vi) The petitioner was misbehaving with the beneficiaries.

4. The petitioner responded to the said show cause notice under his reply dated 27.06.2020. The SDO, thereafter, on 22.08.2020, has issued the impugned order cancelling the petitioner's PDS license.

5. The petitioner's counsel has submitted that the SDO has proceeded against the petitioner with a pre-conceived intention of cancelling his license. Only 48 hours time was allowed, as per the show cause notice dated 16.06.2020. The inspection report dated 08.06.2020, allegedly submitted by the Block Supply Officer, has not been made available to the petitioner along with show cause notice. Lastly, it is submitted that the order of the SDO takes into consideration complains and statements made by certain beneficiaries forwarded by the Ward Member and *Mukhiya* as well as the inspection report 16.06.2020 issued by the Block Supply Officer. Copies of none of these documents have made available to the petitioner. The order itself is also cryptic and shows total non- application of mind by the SDO.



6. Earlier, time was granted to the State counsel for filing counter affidavit, on 05.02.2021. By way of last indulgence one week's further time was granted on 24.02.2021 with a clear stipulation that if counter affidavit is not filed, this Court would proceed further presuming that the State has nothing to comment in respect of the averments made in the writ petition. Till today, counter affidavit has not been filed. However, Mr. Prashant Pratap, learned State counsel, has appeared and submitted that the petitioner has alternative remedy under the Targeted Control Order. In view of such alternative remedy available to the petitioner, this Court should refrain from exercising writ jurisdiction. The petitioner, on account of his violation of the provisions of the Targeted Control Order, has caused great suffering to the beneficiaries, who are poor people, that also at a time when there was general crisis during the global *Covid -2019* pandemic.

7. On a consideration of the submission advanced by the parties, this Court would find that the show cause notice dated 16.06.2020 does not contain copies of the alleged statements of beneficiary supporting allegations against the petitioner as forwarded through the Ward Member(s). It also does not contain a copy of the inspection report dated 08.06.2020 of the Block Supply Officer, based on which, the show cause notice has been issued. The impugned order dated 22.08.2020, however, takes into consideration and is based on these materials.

8. In view of these facts, and situation, it becomes relevant to consider Clause 27 of the Targeted Control Order regarding cancellation of the license, which reads as follows:-

“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.”

9. Bare perusal of the provisions makes it abundantly clear that the order of cancellation of license cannot be made until the licensee has been given sufficient opportunity to state his case against the proposal of cancellation of his license. For the Licensee to realize this opportunity, it is a legal and natural corollary that the show cause notice shall propose cancellation of his license and provide the allegations and material in support of the allegations. In the instant case, even the inspection report of the Block Supply Officer has not been made available to the licensee let alone the alleged statement of the beneficiaries recorded and forwarded through the Ward Member(s).

10. The petitioner has never seen the report of the Block Supply Officer dated 08.06.2020 nor has he had the opportunity of seeing the alleged statements of beneficiaries. Since the same has not been provided to the petitioner the opportunity granted under show cause dated 16.06.2020, is clearly insufficient. The petitioner or any licensee cannot give a reply unless he knows the basis of the



allegations and the material in support thereof. It is only after the same is provided that it can be said that the licensee has been given ***“sufficient opportunity to state his case against the proposal of cancellation of his license”*** as contemplated under Clause 27 (ii) of the Targeted Control Order. This Clause is only in furtherance of principles of natural justice. Therefore, there is a requirement of affording sufficient opportunity in terms of the principles of natural justice before visiting the licensee/petitioner with a consequence of cancellation of his PDS license.

11. In the instant case apparently Clause 27(ii) of the Targeted Control Order has not been complied with. The order of the SDO cancelling the petitioner's license is also in violation of the principles of natural justice.

12. In respect of the objection raised by the State Counsel regarding availability of alternative remedy and that in view of the same this Court should refuse to exercise writ jurisdiction in favour of the petitioner, this Court would observe, that it is trite law that the availability of alternative remedy of refusal to exercise writ jurisdiction in favour of a petitioner is a rule of discretion. Recently this Court in the case of ***Nagendra Prasad Gupta vs. The State of Bihar and others*** in ***CWJC No. 8769 of 2020*** reiterated the law in this regard. The extract of the order passed in ***CWJC No 8769 of 2020*** is worth reproducing in the instant case which reads as follows:-

“By now the law is well settled by decisions of the Apex Court that in at least four circumstances, which this Court is referring to hereinafter, the Constitutional Courts under Article 226, may exercise its discretion to invoke its writ jurisdiction in favour of the petitioner before it, namely:



(i) where the writ petition seeks enforcement of fundamental rights

(ii) where there is violation of the principles of natural justice

(iii) where the order or proceedings against which the writ petition has been filed is without jurisdiction, or

(iv) where the vires of an Act is the subject of the writ proceedings.

Some precedents of the Apex Court laying down this settled legal position and reiterating the same are to be found 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.**”

13. In the facts and circumstances of the case, the order of the SDO Sadar, Madhubani, dated 22.08.2020 cancelling the petitioner’s Public Distribution System License being violative of the principles of natural justice is hereby, quashed. The petitioner is entitled to the consequential benefit of restoration of his license. The Authority, however, would be at liberty to proceed against the petitioner in accordance with law.

14. The writ petition stands allowed.

(Madhuresh Prasad, J)

shyambihari/-

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