

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8592 of 2020

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Sikandar Ram Son of Ramdev Ram Resident of Village-Athmuhan, Block-Bankatwa, P.S.-Ghora Sahan, District-East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Civil Supply Department, Govt. of Bihar, Patna.
2. The District Magistrate-Cum-Collector, District-East Champaran, Motihari.
3. The District Supply Officer, Motihari, District-East Champaran, Motihari.
4. The Sub-Divisional Officer, Sikrahana, District-East Champaran, Motihari.
5. The Block Supply Officer-Cum-Block Development Officer, Bankatwa, District-East Champaran, Motihari.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Vikash Kumar Pankaj
	:	Mr.Pratiyush Kumar
For the Respondent/s	:	Mr.Arvind Ujjwal (SC 4)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

2 18-02-2021 The petitioner has put to challenge an order dated 16.04.2020 to the extent the same relates to him, whereby and where under the Sub-Divisional Officer, Sikrahna in the District of East Champaran, Motihari has cancelled his License No. 17/07-08 for operating a PDS Fair Price Shop. By the said impugned order lodging of an F.I.R. against the petitioner has also been directed. A plea has been taken by the petitioner that the same was passed without service of any show-cause notice upon him to assail the impugned order.

A counter affidavit has been filed on behalf of the



respondents stating therein that before issuance of the impugned order, a show-cause notice was issued to the petitioner on 16.04.2020, which the petitioner had refused to receive. According to the respondents, considering the seriousness of the allegation which had emerged on the basis of enquiry conducted in relation to the irregularities committed by the petitioner, a decision was taken to cancel the petitioner's license by the impugned order.

In reply to the said stand taken by the State of Bihar, a rejoinder affidavit has been filed on behalf of the petitioner bringing on record an order passed by a co-ordinate Bench of this Court dated 07.01.2021 in C.W.J.C. No. 8349 of 2020 (*Khushi Lal Prasad v. The State of Bihar and Others*) whereby the same impugned order dated 16.04.2020 has been set aside in respect of another person on the ground that the petitioner of the said case was not given sufficient opportunity to state his case against the proposal for cancellation of his license, as stipulated under Rule 27 (ii) of the Bihar Targeted Public Distribution System (Control) Order, 2016 (hereinafter referred to as the 'Control Orders'. The said Rule reads as under:-

"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.”

The co-ordinate Bench of this Court while quashing the impugned order in case of ***Khushi Lal Prasad*** (supra) made following observation which reads as under:-

“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.”

It is evident that though it is the petitioner's case that he was not served with any show-cause notice, it is the case of the State of Bihar that a proposed show-cause notice was attempted to be served on him. A copy of the show-cause-notice dated 16.04.2020 has been brought on record by way of Annexure- D to the counter affidavit from which it appears that the petitioner was asked to submit his reply on the same day by 4.00 P.M. The Court fails to understand the circumstance in which the Sub-Divisional Officer decided to ask the petitioner to submit his show-cause reply on the same day by 4.00 P.M. so as to fulfill the statutory requirement under Rule 27 of the Control Orders, as noted above. Evidently, he was exercising *quasi judicial* power vested in him for cancellation of license under the Control Orders. It is noted that he passed the order cancelling the license on the same day i.e. 16.04.2020.

The action of the Sub-Divisional Officer in asking the petitioner to submit his response to the show-cause notice on the date of issuance of notice itself coupled with passing of the impugned order on the same date i.e. 16.04.2020 in utter haste, in Court's opinion is wholly arbitrary, unreasonable and violative of principles of natural justice. The show-cause notice did not, in any case, allow the petitioner a



sufficient opportunity to state his case.

Further, the Court is of the considered view that the Sub-Divisional Officer did not act in a responsible manner, as was expected of a *quasi judicial* functionary exercising his *quasi judicial* power which not only substantially rather greatly prejudiced the petitioner's case, it generated unnecessary litigation before this Court which is already overburdened with dockets. The dispute which could have been resolved by the authorities under the Control Orders has traveled to this Court invoking extraordinary jurisdiction under Rule 226 of the Constitution of India. The Court deprecates such action.

For the aforesaid reason, the impugned order dated 16.04.2020 is set aside. The competent authority shall be at liberty to pass appropriate orders afresh after giving the petitioner fair opportunity, as stipulated under Rule 27 of the Control Orders.

This application is allowed.

Considering the irresponsible manner in which the impugned order came to be passed, it is directed that let this order be placed before the Chief Secretary, State of Bihar to consider whether any case for initiation of disciplinary action is made out against the concerned Sub-Divisional Officer for



acting irresponsibly. The Chief Secretary, State of Bihar or the concerned departmental head may also consider issuance of specific guidelines for proper exercise of power under Rule 27 of the Control Orders.

There shall be no orders as to costs.

(Chakradhari Sharan Singh, J)

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