

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 10315 of 2020

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Md Muzaffar Alam @ Muzaffar Son of Hamid Resident of Village- Dubaili,
Block- Dagarua, P.O.- Tauli Kola, P.S.- Dagarua, Sub-Division- Baisi,
District- Purnia.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Food and Civil Supply Government of Bihar, Patna.
2. The Principal Secretary, Food and Civil Supply, Bihar, Patna.
3. The District Magistrate, Purnea.
4. The District Supply Officer, Baisha, Purnea.
5. The Sub-Divisional Officer, Baisi, Purnea.
6. The Block Supply Officer, Dagarua.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr N K Agrawal, Sr Advocate with Mr Rakesh Bihari Singh, Advocate
For the Respondent/s	:	Mr S Raza Ahmad, AAG V

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CORAM: HONOURABLE MR JUSTICE CHAKRADHARI SHARAN SINGH
and
HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 17-11-2021

Heard learned counsel for the parties.

2 Petitioner was a licensee under Bihar Targeted Public Distribution System (for brevity, *BTPDS*) Control Order, 2016 for running a fair price shop. Alleging violation of the terms of licence, a show cause notice was issued to the petitioner on 23.04.2020 by the Licensing Authority asking him to explain as to why his licence be not cancelled. The petitioner was given time



till 26.04.2020 to submit his show cause reply. On 26.04.2020, the Licensing Authority passed an order cancelling the licence recording petitioner's failure to submit his explanation in response to the show cause notice. The said order passed by the Licensing Authority dated 26.04.2020 (Annexure 2) is under challenge in the present writ application. It is the petitioner's case that the show cause notice was received by him on 24.04.2020. Before the petitioner could submit his explanation, the impugned order came to be passed on 26.04.2020, in utter haste.

3 Mr N K Agrawal, learned senior counsel appearing on behalf of the petitioner has submitted that, three days' time granted by the Licensing Authority, cannot be treated to be 'adequate opportunity' given to the petitioner to deal with the allegations made in the show cause notice. He has further submitted that the very fact that only three days, after the issuance of notice, the impugned order, cancelling the petitioner's licence, was passed by the Licensing Authority, demonstrates that the Licensing Authority did not even wait for the petitioner's reply and was pre-determined to cancel the licence.

4 A counter affidavit has been filed on behalf of the State of Bihar wherein, the facts, regarding the date of issuance of notice, the time which was allowed to the petitioner to submit his



reply and passing of the order on 26.04.2020, have not been disputed. Learned AC to AAG V, however, has submitted that this writ petition is not maintainable as the petitioner has alternative remedy of appeal.

5 In response to the said submission made on behalf of the State of Bihar, it has been argued on behalf of the petitioner that as the impugned order is patently illegal in clear violation of principles of natural justice and in breach of mandatory requirement under Clause 27 (ii) of BTPDS Control Order, existence of alternative remedy may not bar exercise of writ jurisdiction by this Court.

6 Sub-clause (ii) of Clause 27 of BTPDS Control Order mandates that no order of cancellation of a licence shall be made until the licensee has been given sufficient opportunity to state his case against the proposal of cancellation of his licence.

7 In our considered view, Mr Agrawal is correct in his submission that three days' time, allowed to the petitioner to state his case against proposed cancellation of licence, cannot be said to be sufficient opportunity within the meaning of Sub-clause (ii) of Clause 27 of BTPDS Control Order.

8 The impugned order has apparently been passed without waiting for the petitioner's reply to the show cause notice,



after completion of three days of the issuance of notice. Further, the impugned order was passed apparently in utter haste. In such circumstance, the preliminary objection, taken on behalf of the State of Bihar, is overruled. The impugned order dated 26.04.2020, passed by the Licensing Authority cancelling the petitioner's licence, is hereby set aside.

9 The Licensing Authority, however, shall be at liberty to pass an order afresh after considering the petitioner's representation, filed subsequent to passing of the impugned order. It shall be obligatory for the Licensing Authority to pass an order afresh within two months from today failing which the petitioner's licence shall be deemed to be restored. For the interregnum period, the licence shall remain under suspension.

10 This writ petition stands allowed with aforesaid observation and direction.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.11.2021
Transmission Date	NA

