

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3794 of 2021

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Birendra Kumar Tudu S/o Late Prashan Tudu, Resident of Village - Bari Tola,
Ward No. 16, P.O. - Kachhari Balua, P.S. Sarai, District - Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Food and Consumer Protection Department, Government of Bihar, Patna.
2. The Collector, Purnea.
3. The Sub Divisional Officer, Banmankhi, Purnea.
4. The Block Supply Officer, Banmankhi, Purnea.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Dhananjaya Nath Tiwari, Adv.
For the Respondent/s : Mr.Alok Ranjan, AC to AAG-5

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

2 08-04-2021 The present petition has been taken up for consideration through the mode of Video conferencing in view of the prevailing situation on account of COVID 19 Pandemic, requiring social distancing.

The present petition has been filed for quashing the order dated 07.05.2020 passed by the Sub-Divisional Officer, Banmankhi Purnea, whereby and whereunder the PDS license of the petitioner bearing license no. 106/2016 has been cancelled.

The learned counsel for the petitioner



submits that a bare perusal of the show cause notice dated 06.05.2020 issued by the Sub-Divisional Officer, Banmankhi Purnea would show that the same is contrary to the mandate of clause-27(ii) of the Bihar Targeted PDS Control Order, 2016 which clearly stipulates that no order of cancellation shall be made until the licensee has been given sufficient opportunity to defend his case against the proposal of cancellation of license, however, the show cause notice dated 06.05.2020 issued to the petitioner does not contain any such proposal for cancellation of license, hence the petitioner has been precluded from submitting his wholesome defence to the proposal of cancellation of license.

In this regard, the learned counsel for the petitioner has relied upon a judgment rendered by the learned Division Bench of this Court dated 10.07.2018 passed in **L.P.A. No. 499 of 2018 (Ram Bechan Ram Vs. The State of Bihar & Ors)**, relevant paragraphs whereof are reproduced herein below:-



“Even though, the respondents have filed a counter affidavit and have tried to justify the action, we find that under sub-clause (ii) of Order 27 of the Control Order, 2016, it is clearly stipulated 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. The words, ‘proposal for cancellation’ appearing in the statutory provision clearly contemplates that when the show cause notice is issued, licensee should be categorically informed that there is ‘proposal for cancellation of licence’ and show cause notice issued as to why licence should not be cancelled. In the show cause notice issued to the petitioner, apart from the fact that there is no such proposal indicated asking him to show cause as to why licence should not be cancelled, we find that on the second ground also, the impugned action is not sustainable inasmuch as the petitioner gave a detailed explanation and justification against the proposed action, as is contained in Annexure-6, and in a cryptic manner, without considering the explanation and defence of the



petitioner, his licence has been cancelled. This amounts to violation of principles of natural justice inasmuch as the non-application of mind and passing an order adverse to or prejudice to a person without considering his defence is also a facet and the requirement of principles of natural justice and this having not been followed, we are of the considered view that principle laid down in the case of Whirlpool Corporation (supra) squarely applies in this case. The order impugned suffers from material legal infirmity and on this count itself without relegating to the petitioner to take recourse to the statutory remedy available, the question could have been considered by the learned Writ Court as is apparent from the face of record that there is statutory violation or violation of the principles of natural justice.

Keeping in view the aforesaid, we allow the appeal, quash the order passed by the learned Writ Court on 02.04.2018 in Civil Writ Jurisdiction Case No.4687 of 2018, quash the cancellation order passed on 20th January, 2018, Annexure-7, direct for restoration of the licence of the petitioner. However, liberty shall be available to the



respondents to take action afresh in accordance with law, if so advised."

Per contra, the learned counsel for the State, Sri Alok Ranjan (AC to AAG-5), has not disputed the position as is existing in law.

Having regard to the facts and circumstances of the case and considering the law laid down by the learned Division Bench of this Court in the case of *Ram Bechan Ram* (supra), this Court finds that the show cause notice dated 06.05.2020 is contrary to the provisions contained in clause-27(ii) of the Bihar Targeted PDS Control Order, 2016 inasmuch as it does not mention any proposal for cancellation of the license of the petitioner, hence the petitioner has been precluded from submitting his defence, resulting in violation of the principles of natural justice, thus the impugned order dated 07.05.2020 passed by the Sub-Divisional Officer, Banmankhi Purnea, suffers from material legal infirmity on account of the show cause notice dated 06.05.2020 being contrary to the law. Hence, the impugned order dated 07.05.2020



passed by the Sub-Divisional Officer, Banmankhi
Purnea is set aside, however, with liberty to the
Sub-Divisional Officer, Banmankhi Purnea to
proceed afresh, in accordance with law.

The writ petition stands allowed.

(Mohit Kumar Shah, J)

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