

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24248 of 2018

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Dhirendra Kumar Baitha Son of Nandlal Baitha Resident of Village-
Chandpur, Panchayat Madhupur, P.S.- Maharajganj, District- Siwan

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors through the Principal Secretary, Department of Food and Civil Supply, Bihar, Patna
2. The District Magistrate, Siwan
3. The District Supply Officer, Siwan
4. The S.D.O., Maharajganj, Siwan
5. The Block Supply Officer, Maharajganj, Siwan

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Shakil Ahmad Khan
	:	Mr.Raju Prasad
For the Respondent/s	:	Mr.S. Raza Ahmad

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

6 05-07-2021 This matter has been taken up for hearing online because of COVID-19 pandemic restrictions.

The petitioner has challenged in the present writ application under Article 226 of the Constitution of India an order dated 13.08.2018 passed by the District Magistrate, Siwan in Supply Appeal No. 76/2016-17 whereby petitioner's appeal against an order dated 30.07.2016 by the Licensing Authority-cum-Sub Divisional Officer, Siwan has been rejected. By the said order dated 30.07.2016, the Licensing Authority, in exercise of power under Rule 27 of the Bihar Targeted Public Distribution System (Control) Order, 2016 (hereinafter referred



to as 'the Control Order, 2016') has cancelled the petitioner's license to run a PDS shop on the charge of irregularity and violation of the provision of the said Control Order, 2016. The petitioner also seeks a direction to restore his license and allow him to work as Fair Price Shop dealer at Chandpur Gram panchayat, Madhopur in the District of Siwan.

It has been asserted in the writ application that the petitioner was granted license to run PDS Shop at Village Chandpur in 2008 vide License No. 89/2008 and there had been no complaint against him. It appears from the writ petition that a Tata Magic vehicle carrying sixty plastic bags full of rice, each containing 50 kg (total 30 quintal) was intercepted by people of the said Gram panchayat, as according to them, the said food grains, meant to be distributed under the Public Distribution System was being taken for black marketing. The said occurrence led to registration of F.I.R. Immediately thereafter, an inspection of the petitioner's shop was conducted in the petitioner's presence, when no food grain was found in the petitioner's go-down and the petitioner refused to produce any record including distribution register/coupon etc. which he was required to maintain. During the inspection he took a plea that he had deposited the distribution register and other documents



with the Block Supply Officer.

A notice was issued to him by the Licensing Authority vide letter dated 16.06.2016 asking the petitioner to show cause, as to why, the PDS dealer's license granted to him be not cancelled in view of blatant violation of the departmental orders and conditions of license. The petitioner submitted his reply to the said show cause notice on 22.06.2016. The Licensing Authority being not satisfied with the plea taken by the petitioner in his show cause reply, cancelled the license by the aforesaid order dated 30.07.2016. The petitioner's appeal preferred against the said order of the Licensing Authority has also been dismissed by the Collector-cum- vide order dated 13.08.2018. Challenging the aforesaid orders, the petitioner has preferred present writ application.

A counter affidavit has been filed on behalf of the State of Bihar stating therein that noticing palpable violation of government guidelines and terms of license, it was considered appropriate to take action against the petitioner in accordance with the provisions of the Control Order, 2016. The order has been passed after following due procedure and the impugned orders disclose due application of mind by the authorities.

Mr. Shakil Ahmad Khan, learned counsel appearing



on behalf of the petitioner has vehemently argued that the very initiation of action against the petitioner in the direction of cancellation of license is based on mere suspicion. According to him, without any proper verification, the authorities presumed that the food grains loaded in the vehicle which was intercepted by private persons was lifted from the petitioner's PDS shop. He has argued that the vehicle was not intercepted at a place near the petitioner's PDS shop. He has further submitted that no food grain was found by the authorities during the inspection because the petitioner had already distributed the same among the beneficiaries and the documents could not be produced because the same were handed over to the Block Supply Officer. He has strenuously argued that the entire case of the Department for cancellation of license is based on suspicion and, therefore, the impugned action requires interference. He has further submitted that the Licensing Authority has wrongly applied a Supreme Court's directive for cancellation of license.

Learned counsel appearing on behalf of the State of Bihar, on the other hand, has submitted that the writ petition is fit to be dismissed, on the ground that the petitioner has statutory remedy of appeal under Rule 32(6) of the Control Order, 2016. He has further submitted that there is no procedural



irregularity in the action taken by the Licensing Authority and the Appellate Authority. According to him, the Licensing Authority has taken into account all relevant facts including the defence offered by the petitioner and has passed reasoned and speaking order. He has also submitted that the Appellate Authority has also passed the order after taking into account and dealing with the points taken by the petitioner and has dismissed the appeal after due application of mind. According to him, the impugned orders cannot be said to be perverse, as they are based on the evidence, as disclosed in the order itself.

I have carefully perused the show cause notice issued to the petitioner under Rule 27 of the Control Order, 2016, order passed by the Licensing Authority and that of the Appellate Authority. The show cause notice issued to the petitioner fulfills all requirements of Rule 27 of the Control Order, 2016 inasmuch as the licensee was given an opportunity to state his case against the proposal of cancellation of his license. Violation of the provisions of the order and the terms of license were disclosed in the show cause notice. The petitioner replied to the said show cause notice and thus, there has been compliance of principles of natural justice.

The Licensing Authority has noted in his order that in



the go-down of the petitioner's shop no food grain was available. The petitioner did not produce the register depicting distribution of food grains. The Licensing Authority has discussed in his order cancelling the license, the defence of the petitioner to the effect that the seized pick up van did not belong to him and that he had distributed food grains among the beneficiaries for the month of May. The Licensing authority, however, refused to accept the plea taken by the petitioner that he had deposited the distribution register with the Block Supply Officer inasmuch as the Block Supply Officer denied the said stand of the petitioner.

It is evident from the order of the Licensing Authority cancelling petitioner's license that seizure of the food grains was not the only basis for cancellation of the petitioner's license. Failure on the part of the petitioner to produce distribution registers and coupons have been noted by the Licensing Authority as the basis for cancellation of license. The finding arrived at by the licensing authority before the cancelling the license thus cannot be said to be perverse requiring this Court's interference exercising power of judicial review under Article 226 of the Constitution of India. On perusal of the order of the Appellate Authority, I find that the Appellate Authority has duly



considered the points taken by the petitioner in his memo of appeal. It is not the case of the petitioner that any point raised by him before the Appellate Authority was not considered.

It is a settled principle that in exercise of power of judicial review under Article 226 of the Constitution of India, this Court examines the correctness and regularity of the decision making process and not the decision itself. The impugned orders, therefore, in my opinion, do not suffer from such legal infirmity, as to warrant this Court's interference in exercise of power under Article 226 of the Constitution of India.

There is no merit in the application which is accordingly dismissed.

(Chakradhari Sharan Singh, J)

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