

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2669 of 2022

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Amrendra Kumar Yadav, aged about 62 years, male, S/o Late Shiv Prasad Yadav, Resident of Village - Satauor, Tola Baruahhi, P.S. - Nauhatta, District - Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
2. The Collector, Saharsa.
3. The Sub-Divisional Officer, Sadar, Saharsa.
4. The Block Supply Officer, Nauhatta, District - Saharsa.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dhananjaya Nath Tiwari, Advocate

For the Respondent/s : Mr. Anisul Haque, AC to AAG-5

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 20-04-2022

Heard Mr. Dhananjaya Nath Tiwari, the
learned Advocate for the petitioner and Mr. Anisul
Haque, the learned counsel for the State.

2. The petitioner has challenged the order



dated 18.06.2021 passed by the Sub-Divisional Officer, Sadar, Saharsa/the Licensing Authority, whereby his license has been cancelled as also the order passed by the Appellate Authority, viz., the Collector, Saharsa, dated 31.12.2021, whereby the order passed by the Licensing Authority has been sustained.

3. It appears from the records that 48 bags of wheat were found loaded on a vehicle in front of the P.D.S. shop of one Narain Yadav. Consequently, Nauhatta (Darhaar O.P.) P.S. Case No. 47 of 2019 was registered for investigation under Section 7 of the Essential Commodities Act, 1955 against the owner and the driver of the vehicle in question.

4. On receipt of such report, the Collector, Saharsa directed for an enquiry regarding the source from where the 48 bags of rice were purchased and further directed that all the P.D.S. shops falling in the vicinity of the place of seizure be



also inspected.

5. Pursuant to the aforesaid direction of the Collector, Saharsa, the P.D.S. shop of the petitioner was attempted to be inspected but since it was found closed, the premises were sealed.

6. Be it noted that the petitioner had not been made an accused in the aforesaid case till the date of sealing of the premises.

7. Later, the premises were de-sealed and on inspection of the stock, it was found that it was absolutely updated and there was no shortage in the stock.

8. The report indicating such stock position has been brought on record.

9. After about two years, the Superintendent of Police, Saharsa intimated the Licensing Authority that during the investigation of the aforesaid F.I.R., viz., Nauhatta (Darhaar O.P.) P.S. Case No. 47 of 2019, the Supervising Police Officer had recorded the statement of the driver of



the vehicle in question, who suspected the hands of the petitioner in transporting the rice for selling it in the black-market. Merely on the basis of the statement of the driver of the vehicle before the Sub-Divisional Police Officer, who was supervising the case, the Superintendent of Police suggested to the Licensing Authority to cancel the license of the petitioner.

10. It appears that thereafter the petitioner was noticed and his explanation having been found to be unsatisfactory, the license of the petitioner was cancelled and such order of cancellation was sustained by the Appellate Authority, viz., the Collector, Saharsa.

11. Mr. Dhananjaya Nath Tiwari, the learned Advocate for the petitioner has assailed the aforesaid two orders on several counts. In case of the petitioner having been made accused in any criminal case involving breach of any one of the provisions of the E.C. Act, he could have been



proceeded against only under Clause 28 of the Bihar Targeted Public Distribution System (Control) Order, 2016, which mandates that his license would be suspended with immediate effect and after serving show-cause notice to him in accordance with the Code of Civil Procedure and giving him sufficient opportunity to present his case, any lawful action would be taken within 180 days, as far as possible. That not having been done, the petitioner contends that it was a knee-jerk reaction of the Licensing Authority, who merely accepted the suggestion of the Superintendent of Police, who had gone beyond his jurisdiction to suggest for cancellation of the license of the petitioner.

12. The further ground of assail is that even when the petitioner responded to the aforesaid notice and stated that he has falsely been implicated by the driver of the vehicle in question and that his implication and suggestion for cancellation of his license came only after two years of the petitioner



running his P.D.S. shop uninterruptedly, such explanation was never adverted to by either the Licensing Authority or the Appellate Authority.

13. Lastly, it has been submitted that the proceedings cannot be said to have been initiated under Clause 28 of the Bihar Targeted Public Distribution System (Control) Order, 2016 as the license of the petitioner was never suspended in the meanwhile. Only for a short-while, when the petitioner was not found to be present in his shop, the premises were sealed which was later de-sealed. At the time of de-sealing of the premises, no shortage in the stock was found. Notwithstanding the aforesaid facts being brought to the notice of the Licensing Authority as also the Appellate Authority, the order of cancellation of license has been passed.

14. Thus, it has been urged that there has been no application of mind by the Licensing as well as the Appellate Authority.

15. It has further been submitted that



merely because the Supervising Police Officer has found some reason for suspecting the involvement of the petitioner, that itself could not have been a ground for proceeding against the petitioner and cancelling his license.

16. The report of the Sub-Divisional Police Officer/Supervising Authority may or may not be accepted in the ultimate analysis which would seriously depend upon the progress in the investigation of the case. Nonetheless, assuming but not admitting the fact that the petitioner was made an accused after such disclosure made by the driver of the vehicle suspecting his hands, the procedure delineated under Clause 28 of the Bihar Targeted Public Distribution System (Control) Order, 2016 should have been derogated from.

17. The learned counsel for the State however submits that, no doubt, the license of the petitioner has not been suspended before its cancellation by the Licensing Authority but that does



not *ipso facto* mean that the petitioner was not proceeded against under the provisions of the Bihar Targeted Public Distribution System (Control) Order, 2016 as on receipt of such intimation from the Superintendent of Police, the petitioner was noticed and only on his explanation having been found to be unsatisfactory, the order of cancellation has been passed.

18. We but find force in the submission of the learned counsel for the petitioner that the orders passed by both the authorities, referred to above, do not display proper application of mind for the reason that the opinion of the Sub-Divisional Police Officer/Supervising Authority appears to have weighed heavily but wrongly with the Licensing as well as the Appellate Authority. When the petitioner was actually made an accused because of such disclosure of the driver and what is the current status of the case, has not been adverted to by either of the authorities.



19. That the concerned authorities have not taken into account the stock position of the P.D.S. shop of the petitioner is a further reflection of the fact that the order has been passed merely on the asking of the Superintendent of Police, who had no jurisdiction to suggest for cancellation of the license of the petitioner.

20. For the reasons afore-stated, we have not been persuaded to sustain the orders passed by the Licensing Authority as also the Appellate Authority and, thus, we are constrained to and set-aside both the orders.

21. The matter is remitted to the Licensing Authority to give a fresh notice to the petitioner including all the materials which have been collected against him during the course of investigation of the case and the final outcome of the case, if it has reached its finality and only on the explanation offered by the petitioner for which he shall be given ample opportunity, a reasoned order



shall be passed.

22. While passing any order, it is needless to state that the Licensing Authority shall look into all aspects of the matter including that the P.D.S. shop of the petitioner was sealed for a while but at the time of de-sealing the same, the stock position was found to be intact and any other ground which the petitioner shall offer in support of his *bona fides*.

23. The entire exercise shall be completed within a period of 60 days from the date of receipt/production of a copy of this order before Licensing Authority.

24. The petition stands disposed off accordingly.

(Ashutosh Kumar, J)

(Anjani Kumar Sharan, J)

Praveen-II/-

AFR/NAFR	AFR
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