

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 8097 of 2021

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Arvind Kumar Yadav @ Arvind Prasad Yadav S/o Late Bhumi Pati Yadav
resident of Village and P.O. - Damgara, P.S. - Dhamdaha, District- Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Food and Consumer Affairs, Bihar, Patna.
2. The Divisional Commissioner, Purnea Division, Purnea.
3. The District Magistrate, Purnea.
4. The Sub Divisional Officer, Dhamdaha (Purnea).
5. The District Supply Officer, Purnea.
6. The Block Supply Officer, Dhamdaha (Purnea).

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr Arvind Kumar, Advocate

For the Respondent/s : Mr AC to 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 : 22-04-2022

This case has been taken up for online hearing through
video-conference because of COVID 19 pandemic restrictions.

The petitioner has put to challenge an order dated
19.07.2019 passed by the Sub Divisional Officer, Dhamdaha in the



district of Purnea whereby his licence to run a Public Distribution System shop has been cancelled in exercise of power under the provisions of Bihar Targeted Public Distribution System (for brevity, *BTPDS*) (Control) Order, 2016. An appeal was preferred by the petitioner against the said order dated 19.07.2019 which has been rejected by an order dated 07.07.2020 passed by the Appellate Authority which is also under challenge in the present writ application.

Heard learned counsel appearing on behalf of the petitioner and learned Assistant Counsel to Additional Advocate General V on behalf of the State of Bihar.

It appears from the pleadings and other materials on record that through Letter No 149 dated 21.05.2019, the petitioner was asked to explain as to why disciplinary action be not taken in the light of recommendation made by the Block Supply Officer, Dhamdaha through his Letter dated 21.05.2019 reporting irregularities committed by the petitioner. The petitioner was granted three days' time to submit his explanation. It is evident on perusal of the said Communication dated 21.05.2019 that it does not disclose enclosure of the report of the Block Supply Officer dated 21.05.2019 in which irregularities committed by the petitioner were alleged. Further, the said notice did not contain



any proposal of cancellation of the petitioner's licence on the basis of the said irregularities. The petitioner appears to have filed his reply on 27.05.2019 denying the allegation of irregularities against him. The petitioner's explanation was, however, subsequently rejected and communicated to him vide Letter dated 03.06.2019 and the petitioner was asked to submit reply to second show cause notice which was issued to the petitioner asking him to submit his explanation within three days. The petitioner again denied to have committed any irregularity in his reply submitted on 10.06.2019. A third show cause notice was, thereafter, issued to the petitioner on 13.06.2019 asking him to submit evidence in support of the explanation. The petitioner again submitted his explanation on 24.06.2019. The Sub Divisional Officer finally, by an order dated 19.07.2019, invoking provisions under Rule 14 (i), 25 (a) and (d) of the BTPDS (Control) Order, 2016, cancelled the petitioner's licence. Appeal, preferred by the petitioner, has been rejected by the District Magistrate, Purnea by impugned order dated 07.07.2020.

Learned counsel appearing on behalf of the petitioner has submitted that the impugned action of cancellation of licence is patently in violation of mandatory statutory requirement of giving sufficient opportunity to the petitioner against proposal of



cancellation of licence. He has submitted that in no show cause notices, there was any proposal for cancellation of licence. He has secondly submitted that the show cause notices were apparently based on a report of the Block Supply Officer dated 21.05.2019, which was never made available to the petitioner and, therefore, the impugned orders require interference.

Learned counsel appearing on behalf of the State of Bihar, on the other hand, has submitted that the petitioner has not availed remedy of revision under the provisions of BTPDS (Control) Order, 2016 against the orders, which are impugned in the present writ application, and for the said reason, this application deserves to be dismissed, as not maintainable. He has secondly submitted, referring to the petitioner's explanation submitted pursuant to the show cause notice that the contents of the report submitted by the Block Supply Officer dated 21.05.2019 were within the knowledge of the petitioner and, therefore, in his show cause reply, he referred to the said report while denying the allegation of irregularity.

After having perused the pleadings on record and considered the rival submissions made on behalf of the parties, we find force in the petitioner's contention that the petitioner was not given sufficient opportunity to explain before issuance of the order



of cancellation of licence by the Licensing Authority. There is no material to demonstrate that the report of Block Supply Officer was ever made available to the petitioner. There is no doubt about the fact that the allegation of irregularity against the petitioner was based on the said report of the Block Supply Officer dated 21.05.2019. Secondly, in none of the show cause notices issued to the petitioner, there was any proposal to cancel the petitioner's licence, which is mandatory under the provisions to Rule 27 (ii) of BTPDS (Control) Order, 2016. We have noticed that even the show cause notice does not contain any definite charge of any irregularity against the petitioner.

In view of the discussions, as above, we are of the definite opinion that the impugned orders deserve interference on the ground of violation of principles of natural justice. The impugned orders dated 19.07.2019 and 07.07.2020 passed by the Licensing Authority and the Appellate Authority are, accordingly, set aside.

This application is allowed.

It goes without saying that the licensing Authority shall be at liberty to proceed against the petitioner on the charge of irregularity, if any, after following the procedure, as prescribed



under the provisions of BTPDS (Control) Order, 2016 and principles of natural justice.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.04.2022
Transmission Date	NA

