

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16184 of 2021

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Tarkeshwar Ray, male, aged about 56 years, Son of Late Ram Surat Ray,
Resident of Village – ShriRampur, P.O. - Itwa, P.S. - Garkha, District - Saran
(Chapra).

... .. Petitioner

Versus

1. The State of Bihar through its Chief Secretary, Government of Bihar, Patna.
2. The Commissioner Saran Division Chapra.
3. The District Magistrate, Saran (Chapra)
4. The Sub-Divisional Officer, Sadar, Chapra.
5. The Executive Magistrate, Sadar, Chapra.
6. The Block Supply Officer, Garkha, Saran (Chapra).

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Aanand Kumar Ojha, with Mr. Ram Kishore Singh, Advocates
For the Respondents	:	Mr. Alok Ranjan AC to AAG-5

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

Date : 03-02-2022

This matter has been taken up for hearing online because of *COVID-19* pandemic restrictions.

2. Heard Mr. Aanand Kumar Ojha, learned counsel for the petitioner and Mr. Alok Ranjan AC to AAG-5 for the State

3. The writ petition has been filed praying for quashing the order dated 01.06.2021 in Memo No. 301, issued by the Sub Divisional Officer, Sadar, Chapra (for brevity 'S.D.O').

By this order, the petitioner's Public Distribution System (for



short 'PDS') license bearing No. 48 of 2016 has been cancelled.

4. A counter affidavit has also been filed on behalf of the State. The petitioner has not rejoined the issues raised in the counter affidavit by filing a rejoinder.

5. The facts emerging from the pleading and submission of the parties is that a communication was sent by the S.D.O to the Block Supply Officer, Garkha, Saran (Chapra) (hereinafter referred to as 'the B.S.O'). The same was accompanied with a complain signed by 27 beneficiaries of the petitioner's PDS dealership.

6. The allegations were that:

(i) the petitioner was obtaining the finger print of the beneficiaries on the Point Of Sale (POS) machine from their houses by saying that the same was required otherwise their ration quota would lapse.

(ii) The petitioner did not provide voucher in respect of the supply made.

(iii) On going to the dealership for taking their rations they are being told that allocation per unit has been reduced; and less than due ration was being supplied to the beneficiaries.

(iv) Even the reduced/less supply is made every



alternative month and not monthly, at rates which are higher than rates prescribed.

(v) Card holders under the Antyodaya Scheme were not being supplied foodgrains.

(vi) Ever since the beneficiaries have been tagged with the petitioner dealership they are not being supplied non NFSC kerosene oil.

7. The B.S.O. was directed to enquire into these complaints. B.S.O., however, wrote to the S.D.O. under communication dated 24.3.2021 stating that the petitioner enjoys political patronage. The B.S.O. accordingly requested the S.D.O. for deputing an Additional Enquiry Officer with him to enable him to conduct a proper enquiry and submit a report. Under these circumstances, the team inspected the petitioner's PDS dealership on 08.04.2021. Having done so, a report was submitted, whereafter, show cause was issued to the petitioner by the S.D.O., under communication dated 24.09.2021. Based on statement made by certain beneficiaries at the time of inspection two illegalities were alleged. The beneficiaries had complained of being supplied ration less than their allotted quota; and the second complaint was that they were being charged higher than the specified price of the ration.



8. The petitioner has replied to the said show cause. Copy of the same is Annexure-3 to the writ petition. In respect of the beneficiaries, from whom the complaints were made, petitioner has stated that subsequently they have all furnished affidavits denying the allegations. Copies of the same have been enclosed along with his reply.

9. The affidavits were disbelieved by the S.D.O. by saying that the signatures on the affidavits did not tally with the signature of the complainants in their statements recorded during the inspection. The second ground taken by the petitioner is that the Vigilance Committee has issued certificates to the extent that supplies in the petitioner's dealership, was being made properly and in accordance with law.

10. The learned counsel for the petitioner, in the aforesaid facts, has submitted that the petitioner has not been given sufficient opportunity. The order of the S.D.O. manifests non-consideration of the stand taken by the petitioner. Non-consideration by the SDO is not a defect capable of being rectified at the Appellate stage. The submission is that in view of the certificates given by the Vigilance Committee fairness in the supply at the petitioner's dealership stands clarified in terms of Clause 23 of the Bihar Targeted Public Distribution System



(Control) Order, 2016 (for short 'the Control Order, 2016').

11. In support of his submission, learned counsel for the petitioner has cited following judgments:-

(1) 1995 Supp (1) SCC 21: 1995 SCC (L& S) 251(Tilak Chand Magatram Obhan) vs. Kamala Prasad Shukla and others.

(2) Oryx Fisheries (P) Ltd. vs. Union of India (2010) 13 SCC 427: 2010 SCC Online SC 1236

(3) Chartered Accountants of India v. L.K. Ratna, (1986) 4 SCC 537: (1986) 1 ATC 714

(4) State of U.P. v. Mohd. Nooh, 1958 SCR 595: AIR 1958 SC 86

(5) Ram Bachan Ram v. State of Bihar, 2018(4) PLJR 516

(6) Birendra Paswan @ Virendra Paswan vs. The State of Bihar 2021(2)PLJR 466

(7) CWJC No. 12426 of 2020 (Prabhavati Devi v. The State of Bihar)

(8) CWJC No. 9649 of 2020 (Indra Kumar Mahto vs. The State of Bihar)

(9) CWJC No. 9649 of 2020 (Parewa Primary Agriculture Co-operative Society (PACS) v. the State of Bihar)

(10) CWJC No. 4793 of 2021 (Suresh Kumar v. The State of Bihar)

(11) CWJC No. 3721 of 2021 (Durgawati Kunwar v. The State of Bihar).

12. Learned counsel for the State has submitted that the petitioner has remedy of appeal. The writ jurisdiction, therefore, may not be invoked in the present case which involves disputed questions of fact. It is also submitted that the Authority has properly considered the response of the petitioner. The affidavits having been found unsustainable because of mismatch in the signatures, the submission of the petitioner, in his reply, based



on such affidavits, were rightly rejected by the authority.

13. Having considered the rival submissions and the pleadings on record, this Court would first observe that the judgments relied upon by the learned counsel for the petitioner are in respect of settled propositions of law which cannot be denied, but would apply only to the facts and circumstances of the case in which they have been passed.

14. In the instant case, the petitioner, in his reply to the show cause, has attempted to meet both the charges including the allegations made by the various beneficiaries. It is not his case in his response that he was unaware of any beneficiaries complain. The authority has disbelieved the affidavits which raises a factual dispute regarding the veracity and authenticity of the affidavits filed by the petitioner. The Writ Court, exercising jurisdiction under Article 226 of the Constitution of India, would, therefore, refrain from going into the factual dispute regarding the veracity of the affidavits filed by the petitioner before the S.D.O. However, in view of the nature of the order that we proposes to pass, this Court would refrain from making any observation with respect to the merits of the petitioner's claim. If the same are valid, the same may be considered by the Appellate Authority. The petitioner, if so



advised, may approach the Appellate Authority having regard to the disputed nature of issues arising from the order of the S.D.O.

15. The writ application is, accordingly, disposed of.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

