

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19954 of 2021

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Umesh Prasad Singh, Son of Late Musafir Singh, Resident of Village-
Nepura, P.O.- Nepura, P.S.- Deepnagar, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Secretary, Department of Food and Supply and Commerce, Government of Bihar, Patna.
3. The Divisional Commissioner, Patna.
4. The District Magistrate, Nalanda.
5. The Sub-Divisional Officer, Biharsharif, District Nalanda.
6. The Assistant District Supply Officer, Nalanda at Biharsharif.
7. The Block Supply Officer, Biharsharif, District Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shivam, Advocate
For the Respondent/s : Mr.Arvind Ujjwal (S.C. 4)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

Date : 15-02-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s).

“I. For issuance of writ in the nature of certiorari
for setting aside of order dated 16.03.2013 passed
by the learned Sub-divisional Officer, Biharsharif

whereby and where under the PDS license of the petitioner has been arbitrarily and illegally been cancelled and for further setting aside of order 02.12.2016 passed learned District Magistrate in Supply Case No. 9/2014 whereby and where under the order of the Sub-Divisional Officer, Bihar Sharif has been affirmed and for setting aside of order dated 16.09.2021 passed in Essential Commodities Act Revision Case No. 38-2017 whereby and where under without any application of mind the revision filed by the petitioner has been dismissed and his PDS license stands cancelled.

II. For issuance of writ in the nature of Mandamus for directing the respondents to restore the license as well as the supplies of the petitioner.

III. For grant of any other incident or consequential relief to which the petitioner may be found entitled to in the facts and circumstances of the present case.”

It is submitted that petitioner is a PDS dealer and a show cause notice dated 16.02.2012 was issued to him to submit his reply with respect to allegations made by 12 beneficiaries in respect of non supply, inadequate supply of food grains and charging higher rates than the prescribed rates, against which petitioner submitted his reply denying such allegations and thereafter proceeding was dropped and thereafter petitioner was again issued show cause notice dated 01.11.2012 with respect to similar allegation which was also denied by the petitioner in his reply submitted to the Licensing Authority.

The Licensing Authority in his order dated 16.03.2013

has passed order on basis of extraneous materials which were not part of the allegations as served upon petitioner in the show cause notice issued by the Licensing Authority. The Licensing Authority has also taken into the account, the earlier show cause notice dated 12.02.2012 which was issued to the petitioner but after submitting his reply, same was dropped.

From the impugned order dated 16.03.2013 passed by the Licensing Authority, it appears that petitioner was asked to bring all the complainants beneficiaries with him, however, they refused to come. Even on subsequent dates, petitioner failed to produce the complainant beneficiaries and accordingly, Licensing Authority cancelled the PDS licence granted to the petitioner.

The reasoning given by the SDO-cum-Licensing Authority is not sustainable in law as no one can be compelled to produce evidence against him, it was for the department to establish the allegations of irregularities committed by the petitioner before the Licensing Authority-cum-SDO.

The Licensing Authority performs the function as quasi judicial authority which is statutory in nature and has to be an independent adjudicator.

The impugned order dated 16.03.2013 passed by

Respondent No. 5, namely, the Sub-Divisional Officer, Biharsharif, District Nalanda has been passed in a mechanical manner and entails civil consequences as it affects the petitioner's rights.

In view of the submissions made and the grounds mentioned in the petition, the impugned order dated 16.03.2013 passed by Respondent No. 5, namely, the Sub-Divisional Officer, Biharsharif, District Nalanda cancelling P.D.S. Licence of the petitioner, is quashed and set aside, as a consequences of which, order dated 02.12.2016 passed by District Magistrate in Supply Case No. 9/2014 and order dated 16.09.2021 passed by Divisional Commissioner, Patna in Essential Commodities Act Revision Case No. 38-2017 are also quashed and set aside, with liberty to the petitioner to approach Respondent No. 5 afresh.

Petition is disposed of in the following terms:

(a) The petitioner shall make himself available before the Sub-Divisional Officer, Biharsharif, District Nalanda on 09.03.2022;

(b) On the said date, the entire material shall be supplied to the petitioner;

(c) Within two weeks thereafter, petitioner shall file response, complete in all respects;

(d) Petitioner shall fully cooperate and not take any unnecessary adjournment;

(e) The officer shall pass an order assigning reasons within a period of three months thereafter;

(f) While considering such request, principles of natural justice shall be followed and due opportunity of hearing afforded to the parties.

(g) Liberty reserved to the petitioner to challenge the order, should the need so arise subsequently.

The petition is disposed of in the aforesaid terms.

Interlocutory application, if any, shall also stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/rajiv-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	