

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.21135 of 2021

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Pinki Kumari @ Pinki Singh, female, aged about 46 years, wife of Vidya Bhushan Singh, permanent resident of Village- Bodha Chapra, P.S.- Awatar Nagar, District- Saran (Chapra), presently residing at House No. 15, Gali No. 1, Rudra Shakti Mandir, Krishna Puri Bagmali, P.S.- Town, P.S.- Hajipur, District- Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Food and Consumer Protection, Bihar, Patna.
2. The Principal Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
3. The Commissioner, Saran Division, Chapra.
4. The District Magistrate, Saran (Chapra).
5. The Sub- Divisional Officer, Sonapur, Saran.
6. The Assistant District Supply Officer, Sonapur, Saran (Chapra).
7. The Supply Inspector, Jalalpur, Saran (Chapra).
8. The District Rural Development Agency, Saran (Chapra).
9. The Circle Officer, Amnour, Saran (Chapra).

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anand Ojha, Advocate
Mr. Ram Kishore Singh, Advocate
For the State : Mr. Upendra Pratap Singh, AC to SC-4

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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 : 02-03-2022

Heard Mr. Anand Ojha, assisted by Mr. Ram Kishore Singh, the learned Advocates for the petitioner and Mr. Upendra Pratap Singh, learned AC to SC-4 for the State.

2. The petitioner has challenged the order dated 20.07.2017 passed by the Sub-Divisional Officer, Sonapur, whereby his license to run the Public Distribution Shop has been cancelled as well as the order passed in Supply Appeal No. 55 of 2017 by the learned District Magistrate-Cum-Appellate Authority whereby the order of cancellation of license has been sustained, on the ground that the Licensing Authority has passed an order solely basing his opinion on the advise of the Additional District Supply Officer, who had actually inspected the shop and on whose report, the action against the petitioner was initiated.

3. Mr. Ojha, the counsel for the petitioner has drawn our attention to that part of the order of the Licensing Authority where in the entire opinion of the A.D.S.O., referred to above, has been quoted and in one line the defense/explanation of the petitioner has been held to be



unsatisfactory.

4. Though we find that the Appellate Authority has taken pains to take into account the reply of the petitioner while sustaining the order of the Licensing Authority, but at the initial stage of passing the first order, the Licensing Authority was manifestly wrong in not applying his mind and basing his opinion solely on the report of an authority which had inspected his shop and was asked for an opinion by the Licensing Authority with respect to issue of cancellation of the license of the petitioner.

5. Mr. Ojha has drawn the attention of this Court to a judgment of the Supreme Court in *Institute of Chartered Accountants of India Vs. L.K. Ratna; 1986 (4) SCC 537* in which, it has been held that even if the appellate decision cannot be faulted for being a reasoned order, but if it was against an order by the original/Licensing Authority which did not actually apply its mind, such manifest original defect could not be restituted/cured by the Appellate Authority.

6. The aforesaid observation was made by the



Bench in that case, it has been argued, for the reason that there is a necessity to ensure that there is no breach of fundamental procedure in the original proceedings and also to avoid treating the appeal as an overall substitute for the original proceedings.

7. We find force in the submission of the learned counsel for the petitioner.

8. For the reason aforesaid, we set-aside the original as well as the appellate order and remand the matter to the Licensing Authority for him to pass a reasoned order, after giving fresh opportunity to the petitioner to explain his cause.

9. We do not proscribe the Licensing Authority for asking for any opinion from any sub-ordinate Authority but that opinion shall be seen in the context of the reply made by the petitioner and in case the opinion is to be relied upon, necessary reasons will have to be adverted to in the order. Only then the order could be said to be reasoned one.

10. We make it clear that we have not



expressed any opinion with respect to the merits of the case.

11. Should the petitioner bring to the notice of the Licensing Authority, a copy of this order within a period of thirty (30) days, the process shall be initiated by the Licensing Authority and it shall be concluded within a further period of sixty (60) days thereafter.

12. With the aforesaid observation/direction, the writ petition stands disposed off.

(Ashutosh Kumar, J)

(Anjani Kumar Sharan, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	03.03.2022
Transmission Date	N/A

