

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1942 of 2023

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Md. Nurshad @ Md. Noorshad Alam, Son of Late Md. Murtaza, Resident of
Village- Pramanik Tola, P.S.- Abadpur, Block- Barsoi, District- Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Patna.
2. The Divisional Commissioner, Purnea.
3. The District Magistrate, Katihar.
4. The Sub Divisional Officer, Barsoi, Katihar.
5. The Block Supply Officer, Barsoi, Katihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kumar Rajdeep, Adv.

For the Respondent/s : Mr. S. Raza Ahmad, AAG-5.

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY

ORAL JUDGMENT

Date : 21-08-2023

The present writ petition has been filed seeking
the following relief:-

*“For issuance of a writ in the
nature of Certiorari for quashing the Order
dated 24.08.2022 passed in Supply Revision
No.94/2022-23 by the Divisional Commissioner,
which was filed against the order of the District
Magistrate, Katihar, dismissing the appeal by
order dated 10.08.2021 Supply Appeal
No.159/2017-18 filed after order dated
29.02.2016 of the Sub- Divisional Officer,
Barsoi, Katihar by which P.D.S license No. 1/09
of the petitioner was cancelled are liable to be
set-aside as the same have been passed in*



violation of the principles of Natural Justice, in as much as the Impugned Orders have been passed without considering the facts and circumstances of the case.”

2. Learned counsel appearing on behalf of the petitioner has stated that the licence of the petitioner has been cancelled on the sole ground that an F.I.R. has been lodged against the petitioner. The counsel has stated that at no point of time the petitioner was arrested nor he was declared a fugitive after lodging of the F.I.R.. Thereafter, the cancellation of the licence was solely based on the fact that the F.I.R. has been lodged without putting the petitioner on show cause notice or calling for an explanation, that the said cancellation is arbitrary, illegally bad and contrary to the provisions of the Act. Further, learned counsel for the petitioner has stated that the authority concerned has cancelled the licence of the petitioner based on the report sent by the Block Supply Officer on the very same day without putting the petitioner on notice nor calling for any explanation. Learned counsel for the petitioner has relied on the judgement of a Division Bench of this Hon’ble Court passed in C.W.J.C. No. 21179 of 2021 dated 22.02.2022.

3. Per contra the learned counsel appearing on behalf of the respondents has stated that the present writ petition is not maintainable, as all the authorities i.e. the Primary, the



Appellate and the Revisional Authority have found that the petitioner has violated the provisions of the Act. Learned counsel has stated that after cancellation of the licence of the petitioner, the petitioner has preferred an appeal and the same was dismissed, thereafter, he has preferred a revision and the Revisional authority has also dismissed the revision. Learned counsel has stated that the finding of fact arrived at by all the three authorities i.e. the Primary, the Appellate as well as the Revisional Authority cannot be interfered under Article 226 of the Constitution of India and prayed this Hon'ble Court to dismiss the present writ petition.

4. A perusal of the impugned order shows that the Sub-Divisional Officer has cancelled the licence of the petitioner basing on the report sent by the Block Supply Officer. The Block Supply Officer has reported to the Sub-Divisional Officer that the F.I.R. has been lodged against the petitioner and on the very same day the Sub-Divisional Officer has passed the cancellation order without putting the petitioner on notice or calling any show cause notice. Both the Appellate as well as the Revisional Authority have lost sight of the fact that mere pendency of the criminal case against the petitioner cannot be a ground for cancellation of the licence of the petitioner.



5. A Division Bench of this Hon'ble Court in the Judgement dated 22.02.2022 passed in C.W.J.C. No. 21179 of 2021 under similar circumstances held as under:-

“The pendency of a criminal case cannot be a ground for cancellation of licence, as special provision has been made for such cancellation under the Bihar Targeted PDS (Control) Order, 2016.

Section 28 of the Bihar Targeted PDS (Control) Order, 2016 specifies that if an FIR is lodged against a licensee under the E.C. Act, 1955 or for any other criminal case or the licensee is sent to jail or he goes fugitive, his licence shall be suspended by the licensing authority with immediate effect and after serving show-cause notice to him in accordance with the provisions of the Civil Procedure Code and after giving him sufficient opportunity to present his case, an action would be taken within 180 days, as far as possible.

The outer limit of 180 days has been given so that the licence does not remain under animated suspension for a long time. It is one of the requirements under the Bihar Targeted PDS (Control) Order, 2016 that the PDS shop in a locality ought not to be kept vacant and the process of filling such vacant shops has to be a continuous one.”

6. Having regard to the same, all the impugned orders i.e. the order dated 29.02.2016 passed by the Sub-Divisional Officer, Barsoi, Katihar, the appellate order dated



10.08.2021 passed by the District Magistrate, Katihar and the revisional order dated 24.08.2022 passed by the Divisional Commissioner, Purnea are set aside and the licence of the petitioner is restored and the petitioner shall be supplied the commodities for distribution. In case, the authorities want to take any action, the petitioner shall be put on notice and given an opportunity of submitting his explanation and hearing and necessary orders passed in accordance with law. The entire exercise shall be completed within a period of two months from the date of the receipt of the copy of this order.

7. With the above directions, the present writ petition is allowed.

(A. Abhishek Reddy , J)

shakir/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.08.2023
Transmission Date	NA

