

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3849 of 2023

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Rameshwar Thakur, S/o Late Vishwanath Thakur, Resident of Village and Panchayat- Jagapakar, P.S.- Harsidhi, District- East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
2. The Collector, East Champaran at Motihari.
3. The Sub- Divisional Officer, Areraj, District- East Champaran.
4. The Block Supply Officer, Harsidhi, District- East Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Dhananjaya Nath Tiwari, Advocate
For the Respondent/s : Mr.Arvind Ujjwal (SC 4)

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL JUDGMENT

Date : 12-10-2023

Heard the learned counsels for the parties.

2. This writ petition has been filed for seeking the following relief(s)

“For quashing the order dated 15.04.2020 contained in memo no.141 dated 16.04.2020 passed by the learned Sub Divisional Officer Areraj (East Champaran) by which the PDS license of the petitioner being licence no. 71/2016 has been cancelled and further for quashing the appellate order dated 16.06.2022 passed in PDS Appeal No. 14/2020 by the learned Collector-cum-District Magistrate, East Champaran at Motihari by which he was pleased to dismissed the statutory appeal filed on behalf of the petitioner and further be pleased to restore the license and supply of the petitioner”.

3. Learned counsel appearing on behalf of the



petitioner has stated that the authority concerned have not enclosed the copy of the enquiry report along with the show cause notice. Further it is stated that the second show cause notice (Annexure 3 of the writ petition) does not contemplate any proposed action to be taken against the petitioner as contemplated (under 27(ii) of the Bihar Targeted Public Distribution System (Control) Order, 2016 (hereinafter referred to as 'the Order, 2016').

4. Learned counsel has stated that even though the petitioner has taken specific ground in the appeal filed by the petitioner against the cancellation order, the authority concerned has not considered the same. Therefore, the learned counsel appearing on behalf of the petitioner states that impugned order dated 15.04.2020 passed by the Sub-Divisional Officer as well as appellate order dated 16.06.2022 passed by the Collector-cum-District Magistrate may be set aside and matter remanded back to the authorities concerned for issuing a fresh show-cause notice in terms of order 27(ii) of the Control Order, 2016 and also furnish a copy of the enquiry report along with the said show-cause notice and thereafter take necessary action.

5. Per contra, the learned counsel appearing on behalf of the respondents has vehemently opposed the very



maintainability of the writ petition and stated that the present writ petition is not maintainable as the petitioner has an alternative and efficacious remedy of filing a revision before the Divisional Commissioner. Learned counsel states that the petitioner may raise all above mentioned grounds before the Divisional Commissioner and therefore prayed this Hon'ble Court to dismiss the present writ petition.

6. A perusal of the impugned orders as well as show cause notice issued to the petitioner (Annexures 1 and 3) does not reveal that the copy of the inquiry report was furnished to the petitioner. Moreover as seen from the second show cause notice dated 13.04.2023 (Annexure 3), the same does not reveals the proposed action sought to be taken against the petitioner.

7. This Court in CWJC No.253 of 2014 dated 11.03.2015 held as under:

"In my opinion, irregularities in maintenance of notice board or maintenance of the stocks within the premises of the petitioner are too trivial and cannot form a basis for cancellation of licence. No doubt there were other serious charges against the petitioner regarding non-issuance of cash-memo to the consumers, distribution of lesser amount of kerosene oil and non-distribution of food-grains but surprisingly even while making such allegations, the names of such consumers who are dissatisfied by such



action of the petitioner are conspicuously missing. The allegations are sweeping in nature without reference to any specific consumer.

In my opinion the non-supply of the enquiry report conducted by the District Level Committee which is the foundation for issuance of show cause notice placed at Annexure-1 as well as non-supply of names of such of the consumers who had complained against the petitioner as regarding the irregularities in distribution of the food-grains or the kerosene oil has prejudiced the petitioner to file his purposeful reply and in absence thereof, the order impugned in my opinion, are based on no materials.

Though it was strenuously argued by Mr. Pandey that in absence of any response by the petitioner the allegations would be deemed to have been admitted but in my opinion even if the show cause reply was missing, the orders passed by the statutory authorities having civil consequences and resulting in cancellation should reflect application of mind. Unfortunately it is grossly missing inasmuch as neither the order of the Licensing Authority nor the order of the appellate authority deal with the materials which formed the basis to drive home the charges. The orders impugned are indefensible and cannot be upheld."

8. Further a full Bench of this Hon'ble Court in CWJC No.21202 of 2021 and analogous cases has held as under:

"19. Accordingly, we answer the reference as under:-



It is mandatory for a licensing authority issuing a notice under order 27(ii) to a license to mention that there is a proposal for cancellation of his license, failing which such notice cannot be treated to be a valid notice of giving sufficient opportunity to the licensee to state his case under order 27(ii) of the BTPDS Control Order. ”

9. Having regard to the above facts and circumstances and the law laid down by this Hon’ble Court in the above cited cases, the present CWJC is allowed. The impugned order passed by the Appellate authority dated 16.06.2022 as well as the Sub-divisional Officer dated 16.04.2020 are set aside. The matter is remanded back to the Sub-Divisional Officer for issuing a fresh show-cause notice to the petitioner strictly in compliance with the provisions of Rule 27(ii) of the Control Order, 2016 and also furnish a copy of the enquiry report, the names of the complainants and statements if any made by the complainants to the petitioner giving reasonable time to file his explanation.

10. On such show-cause notice being served, the petitioner shall file his explanation to the said show-cause notice within the stipulated time. On receipt of the explanation submitted by the petitioner the authority concerned shall pass a reasoned order strictly in accordance with law duly taking into



account the explanation submitted by the petitioner.

11. It is needless to mention that before passing any orders, the petitioner shall be given an opportunity of hearing. The entire exercise shall be completed as expeditiously as possible preferably within a period of eight weeks from the date of receipt of a copy of this order. Any order passed shall be communicated to the petitioner.

12. With the above directions, this Writ Petition is allowed to the extent indicated above.

(A. Abhishek Reddy , J)

Bhardwaj/-

AFR/NAFR	
CAV DATE	
Uploading Date	17.10.2023
Transmission Date	

