

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7197 of 2023

Manoj Kumar Das @ Manoj Das Son of Devendra Das, resident of village -
Tilakpur, Police Station - Sultanganj, District – Bhagalpur ... Petitioner
Versus

1. The State of Bihar through the Principal Secretary, Department of Food and Supply, Government of Bihar, Patna.
2. Principal Secretary, Food and Supply Department, Government of Bihar, Patna.
3. The Commissioner, Bhagalpur Division, Bhagalpur.
4. The District Magistrate, Bhagalpur.
5. The Licensing authority cum Sub-divisional Officer, Sadar, Bhagalpur.
6. The District Supply Officer, Bhagalpur.
7. The Block Supply Officer, Sultanganj, District – Bhagalpur. ... Respondents

Appearance :

For the Petitioner : Mr.Md. Najmul Hodda, Adv.
For the Respondents : Mr.S. Raza Ahmad, AAG V

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

6 11-12-2023 Heard the learned counsel for the parties.

2. The present writ petition has been filed for the
following reliefs :

“I. For issuance of appropriate writ of certiorari or any other appropriate writ order or direction for quashing the order dated 18.09.2019 as contained in memo no. 830 dated 01.10.2019 passed by the Licensing Authority cum Sub- divisional Officer, Sadar Bhagalpur by which he has most arbitrarily and quite erroneously cancelled the petitioner's fair price shop bearing license No. 41/2016 without considering the show cause of the petitioner as well as without providing complete enquiry report.

A true of the aforesaid order dated 18.09.2019 as contained in memo No. 830 dated 01.10.2019 is annexed herewith and marked as Annexure-1 to this writ application.



II. For issuance of a writ of certiorari or any other appropriate writ order or direction for quashing the order dated 19.02.2021 in Supply Appeal Case No. 79 of 2020-21 passed by Respondent No. 4 The District Magistrate, Bhagalpur dismissing the appeal by confirming the order dated 01.10.2019 issued by the respondent No. 5 The S.D.O., Sadar, Bhagalpur by which he has cancelled the P.D.S. license of the petitioner.

A true copy of the order dated 19.02.2021 in Supply Appeal Case No. 79 of 2020-21 is annexed herewith marked as Annexure-2 to this writ application.

III. For issuance of a writ of mandamus or any other appropriate writ order or direction for quashing the order dated 08.06.2022 in Supply Revision Case No. 38 of 2021-22 passed by Respondent No. 3 the Commissioner, Bhagalpur dismissing the revision application by affirming the order dated 01.10.2019 and 19.02.2021 respectively passed by S.D.O.. Sadar Bhagalpur and the District Magistrate, Bhagalpur.

A copy of the order dated 08.06.2022 is annexed herewith and marked as Annexure- 3 to this writ application.

IV. For issuance appropriate writ(s), order(s) or direction(s) to the respondent Licensing Authority cum Sub-divisional Officer to restore the petitioner's license bearing no. 41/2016 for running his fair price shop.

V. For issuance of appropriate writ (s), order (s) or direction(s) to the respondent Licensing Authority cum Sub-divisional Officer for releasing allotment of items under the Public Distribution System Scheme to the petitioner as it was being done before the cancellation of the petitioner's license in question.

VI. To grant such other consequential relief(s) to the petitioner, which this Hon'ble Court may find the



petitioner to be entitled to in equity and/ or in law in the facts and circumstances of the case.

3. Learned counsel appearing on behalf of the petitioner has stated that in the Show Cause Notice issued by the Sub-Divisional Officer there is no proposal for cancellation of the license. Learned counsel has stated that non-mentioning of the proposal for cancelling his license is contrary to the provisions of order 27(ii) of the Bihar Targeted Public Distribution System (Control) Order, 2016 (hereinafter referred to as 'the Order, 2016').

4. Learned counsel for the petitioner has relied on the judgment of the full Bench passed in CWJC No.21202 of 2021 and analogous cases dated 26.09.2023 to buttress his contention that non-mentioning of the proposed action in the show-cause notice is bad in law and contrary to Rule 27(ii) of the Control Order, 2016.

5. Learned counsel has stated in view of the above mentioned provisions of law and judgment relied by the petitioner, the impugned order 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 thereafter take necessary action.



6. 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 exhausted all the remedies and all the authorities have found that the petitioner has violated the provisions of the Control Order, 20017. Learned counsel has therefore prayed this Hon'ble Court to dismiss the present writ petition.

7. 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. ”

8. A perusal of the show-cause notice issued to the petitioner does not reveal that there is any proposal of the action sought to be taken against the petitioner. Therefore, the same has to held as bad, illegal, contrary to the provisions of Rule 27(ii) of the Control Order and has to necessarily set aside.

9. Having regard to the above facts and circumstances and the law laid down by this Hon'ble Court, the present CWJC



is allowed. The impugned order passed by the Revisional Authority dated 08.06.2022, passed in Supply Revision Case No. 38 of 2021-22, the order passed by the Appellate Authority dated 19.02.2021, passed in Supply Appeal Case No. 79 of 2020-21 as well as the order passed by the Sub-Divisional Officer, Sitamarhi dated 18.09.2019 vide Memo No. 830 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 call for his explanation by giving him reasonable time.

10. On such show-cause notice being served, the petitioner shall file his explanation 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 consideration 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)

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