

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4660 of 2023

=====

M/s Verma Enterprises through its Proprietor Ramdev Verma, aged about-55 Years, Male, Son of Late-Late-Sukdev Sah Resident of Vilalge and P.O.- Bedauli, Block-Masaudhi, P.S.-Bhagwanganj, District-Patna ... Petitioner

Versus

1. The State of Bihar through the Secretary, Agriculture Department, Government of Bihar, Patna.
 2. The District Appellate Officer, Patna.
 3. The Joint Director Agriculture and Fertilizer, Patna Circle Patna Cum Appellate Authority, Patna.
 4. The District Agriculture Officer, Patna.
 5. The Block Agriculture officer, Masaudhi, Patna. ... Respondents
- =====

Appearance :

For the Petitioner	:	Mr. N.K. Agarwal, Sr. Adv. with M/s Kumar Rajdeep, Arvind Kumar & Dhananjay Nath Tiwary, Advs.
For the Respondents	:	Mr.Dhurjati Kumar Prasad, GP XIV

=====

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

7 11-09-2023 Heard learned counsel for the parties.

2. The present Writ Petition is filed for the following

relief(s) :

i. For issuance of a writ in the nature of Certiorari for quashing of the Order dated 29.08.2022 (annexure-1) passed by the District Agriculture Officer, Patna (respondent No.4) by which retailed fertilizer license No. 122(R) granted to the petitioner for carrying on business in retail fertilizer has been cancelled without following the Principle of Natural Justice i.e. without giving show cause notice and or an opportunity of hearing as provided under Section 31 of the The Fertilizer (Control) Order, 1985 and also the appellate order dated 09.01.2023 (annexure-2) passed by the Joint Director Agriculture & Fertilizer, Patna Circle Patna cum Appellate Authority, Patna (respondent No.2) by which the appeal preferred by the petitioner is dismissed on totally non-est and erroneous grounds in completely



mechanical manner.

ii. For issuance of any other relief or relief(s) for which the petitioner is entitled for.

3. Learned counsel for the petitioner has stated that the authorities concerned without issuing any show cause notice has straightaway cancelled the license of the petitioner. Learned counsel has stated that the cancellation of the license without issuing any show cause notice or calling for any explanation is contrary to the principles of natural justice and equity. That any order passed in violation of the above said principles is liable to be set aside. Learned counsel has stated that the Appellate Authority without adverting to the above ground taken by the petitioner has mechanically decided the appeal filed by the petitioner and dismissed the appeal. Learned counsel has stated that the authorities in their counter affidavit have admitted to the factum of not serving any show cause notice prior to passing of the order of cancellation and, therefore, prayed this Hon'ble Court to allow the present Writ Petition.

4. The counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the Writ Petition on the ground that the petitioner has the remedy of filing of an appeal. However, when this Hon'ble Court queried as to



whether the petitioner was given any show cause notice prior to the passing of the order of cancellation, the counsel for the respondents has fairly stated that as per paragraph 21 of the counter affidavit no show cause notice was issued to the petitioner before the cancellation order was passed. This Court as well as the Hon'ble Supreme Court in catena of cases has held that the principles of natural justice and equity mandate that before passing any adverse order against any person a duty is cast on the authority to put the said person on notice and call for an explanation and, thereafter, pass a reasoned order. There principles of natural justice and equity are held to be inviolable and cannot be dispensed with. The Hon'ble Supreme Court as well as this Hon'ble Court has depreciated the practice of the authorities not issuing any show cause notice before passing any adverse order. In this particular case, the order impugned reveals that no show cause notice was issued to the petitioner before the license of the petitioner was cancelled. Even in the counter affidavit filed by the authorities the said fact has not been denied, therefore, the order of cancellation has to be necessarily set aside.

5. Even the order of the Appellate Authority cannot be sustained once it is held that the original order passed by the



Respondent No. 4 is bad and against the principles of natural justice and equity. This Hon'ble Court in C.W.J.C. No. 21135 of 2021 has held as under :

“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.”

6. Having regard to the above mentioned facts and circumstances the impugned order of the Appellate Authority vide Letter No. 2021, dated 06.10.2022, and also the order No. 222, vide Memo No. 3258, dated 29.08.2022, of the District Agriculture Officer, Patna, are **set aside**. The matter is



remanded back to the Respondent No. 4 for passing orders afresh. The authority concerned shall serve a show cause notice to the petitioner and call for his explanation. After receipt of the explanation from the petitioner, the Respondent No. 4 shall pass a reasoned order, duly giving an opportunity of hearing to the petitioner. 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 parties.

(A. Abhishek Reddy , J)

Shamshad/-

U			
---	--	--	--

