

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5225 of 2023

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Umesh Thakur Son of Late Raghunath Thakurm Resident of Vilage-Berua,
Police Station-Gaighat, District-Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Food and Consumer Protection Department, Government of Bihar, Patna.
2. The Divisional Commisioner, Tirhut Division, Muzaffarpur.
3. The Collector, Muzaffarpur.
4. The Sub Divisional Officer (East.) Muzaffarpur.
5. The Block Supply Officer, Gaighat, Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prem Prakash Poddar, Adv.
For the Respondent/s : Mr. S. Raza Ahmad (Aag5)

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

7 10-10-2023 This writ petition has been filed for the following
reliefs:-

*"That this writ petition is
being filed on behalf of the petitioner for
issuance of appropriate writ(s), Order(s),
directions(s) for quashing the order
contained in Memo No. 1097, dated
08.10.2018 passed by the Learned Sub
Divisional Officer cum licensing
authority by which the P.D.S. License of
the petitioner being License No. 23-04-
05-01-2016 has been cancelled and
further for quashing the appellate order
dated 03.09.2021 passed in Supply
Appeal Case No. 13 of 2018-19 by the*



Learned Collector cum District Magistrate, Muzaffarpur and also further for quashing the Learned Divisional Commissioner order dated 20.02.2023 passed in P.D.S. Revision Case No. 141 of 2022 by the Learned Divisional Commissioner Tirhut Division, Muzaffarpur by which he has dismissed the P.D.S. Revision affirmed the order of the Learned Collector cum District Magistrate and further be pleased to restore the license and supply of the petitioner."

Learned counsel for the petitioner has stated that initially the show cause notice was issued to the petitioner on 26.07.2018 for which the petitioner has given a suitable reply, thereafter, a second show cause notice was issued on 11.09.2018 for which also the petitioner has given a suitable reply. The authority concerned has passed the order of cancellation on 08.10.2018 taking a fresh allegation that the petitioner has given the provisions under two ration cards to a single person. Learned counsel has stated that the above said allegations were not there in the show cause notice which was issued earlier to the petitioner and therefore, the order of cancellation is contrary to the principles of natural justice and



equity. Learned counsel has stated that had the said allegation being made in the show cause notice, the petitioner could have explained the reasons under which the provisions under the two ration cards were issued to a single person. Learned counsel has stated though a specific ground has been raised by the petitioner in the appeal, the Appellate Authority has not taken the same into consideration and passed the order in a mechanical manner without adverting to the above said ground.

Per contra, the learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the present writ petition and stated that the present writ petition is liable to be dismissed on the sole ground that the petitioner has alternative and efficacious remedy of filing a revision before the Divisional Commissioner. Learned counsel has stated that both the authorities have held that the petitioner has violated the provisions of the Control Order and the same does not require any interference from this Hon'ble Court. Learned counsel has, therefore, prayed this Hon'ble Court to dismiss the present writ petition.

A perusal of the impugned order shows that the order of cancellation was passed by the Sub Divisional Officer on the



ground that the petitioner has issued the provisions under two card holders to a single person. The above ground on which the license of the petitioner has been cancelled is not reflected in the show cause notice issued to the petitioner on 26.07.2023 and 11.09.2018. The passing of the order dated 08.10.2018 by the Sub Divisional Officer without issuing any show cause notice with the above stated allegation has to be held as bad in law and in violation of principle of natural justice and equity. The impugned order passed by the Sub Divisional Officer is liable to be set aside on this sole ground and the same is accordingly set aside. Once the order of the primary authority is held to be bad and set aside, the orders passed by the Appellate Authority does not have any legs to stand and the same is also liable to be set aside. Having regard to the same, the orders passed by the Sub Divisional Officer and the Appellate Authority are set aside and the matter is remanded back to the Sub Divisional Officer for passing orders afresh. It is needless to mention that the petitioner shall be served a fresh show cause notice containing all the allegations and will be given an opportunity of filing an explanation to the said show cause notice. That on receipt of the explanation from 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. The entire exercise shall be completed as expeditiously as possible preferably within a period of eight weeks from the date of receipt of the copy of the explanation from the petitioner. It is needless to mention that before passing any order, the petitioner shall be given an opportunity of hearing. Any order passed shall be communicated to the parties.

With the above directions, the writ petition stands disposed of.

(A. Abhishek Reddy , J)

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