

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5753 of 2023

=====

M/s Jay Mahadev Khad-Beej Bhandar Kursakanta, Araria represented through its proprietor, namely, Arvind Kumar Sah, Gender Male, aged about 36 years, Son of Umesh Prasad Sah, resident of Ward No. 11, Kursakanta, P.S. Kursakanta, District - Araria – 854331 ... Petitioner

Versus

1. The State of Bihar represented through the Principal Secretary, Agriculture Department, Government of Bihar, Patna.
 2. The Joint Director (Shashya), Purnea Division, Purnea.
 3. The District Agriculture Officer, Araria.
 4. The District Magistrate, Araria.
 5. The Sub Divisional Officer, Araria. ... Respondents
- =====

Appearance :

For the Petitioner : M/s Kumar Ravun, Sanjay Kumar Sharma & Siddhi Aashana, Advs.
For the Respondents : Mr.Sarvesh Kumar Singh, AAG XIII

=====

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

14 18-12-2023

Heard the learned counsel for the parties.

2. The present writ petition has been filed for the following relief(s) :

a. To quash and set aside Annexure- P/5 i.e. an Order dated 14 November, 2022 passed in Appeal Case No. 58/2022-23 by the appellate authority-Respondent No. 2 who is the Joint Director (Shashya) Purnea Division, Purnea under which the appeal of this petitioner challenging its license cancellation order was rejected.

b. To quash and set aside Annexure- P/3 i.e. an Order dated 4 August, 2022 (Memo No. 2304) passed by the licensing authority i.e. the Respondent No. 3-District Agriculture Officer, Araria whereby and whereunder the fertilizer license of this petitioner was cancelled.



c. To direct for restoration of the license of the petitioner under license No. 9/2018-19.

d. Any other relief or reliefs which the petitioner may found entitled to in the facts and circumstances of the case.

e. To direct for payment of costs of this litigation.

3. It is the case of the petitioner that he has been issued fertilizer license way back in the year 2018 vide License No. 9 of 2018-19 issued by the District Agriculture Officer-cum-Licensing Authority, Araria. That the petitioner has been conducting the business without any complaint from any of the farmers or consumer. That on 14.07.2022 the inspection of the premises of the petitioner was done by the Sub Divisional Officer, Araria, and, thereafter, on 29.07.2022 order of suspension was passed by the District Agriculture Officer, Araria, along with show cause notice vide Memo No. 2270. That the petitioner has submitted his explanation to the show cause notice on 04.08.2022, however, the authority without considering the explanation submitted has cancelled the license of the petitioner. Thereafter, the petitioner has preferred a statutory appeal before the Appellate Authority. That the Appellate Authority heard the matter several times and the licensing authority was directed to examine the documents submitted by the petitioner. An enquiry report was submitted by



the team constituted by the licensing authority vide Letter No. 3129, dated 04.11.2022, however, the copy of the said report was not furnished to the petitioner. That on the instructions of the Appellate Authority, the Assistant Director, Plant Protection, Araria, has also conducted an enquiry and submitted a report on 11.11.2022 vide Enquiry Report no. 239. That the Appellate Authority instead of considering the report submitted by the Assistant Director, Plant Protection, Araria, and exonerating the petitioner has rejected the appeal filed by the petitioner. Learned counsel has submitted that the Appellate Authority having directed the Assistant Director, Plant Protection, Araria, to submit an enquiry report has not considered the same. Further it is stated that as per the enquiry report, dated 11.11.2022 bearing no. 239, the petitioner was exonerated of all the charges, however, on mere suspicion with regard to some of the entries the appeal has been rejected by the Appellate Authority. Learned counsel has, therefore, prayed this Hon'ble Court to set aside the order of the Appellate Authority and direct the appellate authority to pass a reasoned order duly taking into consideration the report, dated 11.11.2022, bearing Enquiry Report No. 239 submitted by the Assistant Director, Plant Protection, Araria.

4. Per contra the learned counsel appearing on behalf



of the respondent-State has vehemently opposed the very maintainability of the present writ petition and stated that both the appellate as well as the licensing authority duly taking into consideration the fact that the petitioner has indulged in illegal activities have cancelled the license. Learned counsel has stated that the petitioner has been making wrong entries in the books of accounts and indulging in black marketing of fertilizer/urea. Learned counsel has stated that even as per the enquiry report submitted by the Assistant Director, Plant Protection, Araria, dated 11.11.2022, the entries made by the petitioner in the register are found to be suspicious and the same has been confirmed by the team constituted by the licensing authority, who vide Letter No. 3129, dated 04.11.2022, who confirmed the allegations made against the petitioner. Learned counsel has, therefore, prayed this Hon'ble Court to dismiss the present Writ Petition.

5. Admittedly, in the present case, the allegation against the petitioner is that he is making wrong entries in the distribution register showing that the customers have purchased more number of bags than what is actually purchased by them. That some of the customers were telephonically called by the authority and they have confirmed that they have purchased only one bag whereas the entries has been made to the effect



that they have purchased 2 or 3 bags. Further, the authority has cancelled the license of the petitioner on the ground that the explanation submitted by the petitioner was not satisfactory. Against the order of cancellation the petitioner has preferred an appeal and the Appellate Authority in its wisdom has called for a report from the licensing authority as well as the Assistant Director, Plant Protection, Araria, and passed the order of confirming the orders of cancellation of license.

6. A perusal of the order passed by the Appellate Authority reveals that the authority was influenced by the report submitted by licensing authority vide Letter No. 3219, dated 14.11.2022, and has not adverted to the report submitted by the Assistant Director, Plant Protection, Araria, vide Enquiry Report No. 239, dated 11.11.2022. It is pertinent to note that the authority having directed the Assistant Director, Plant Protection, Araria, to submit a report with regard to the veracity of the allegations made against the petitioner, has not considered the said report even though the said report was on the file of the said authority. A perusal of the report submitted by the Assistant Director, Plant Protection, Araria, dated 11.11.2022, vide Memo No. 239 shows that the allegation against the petitioner that he is making wrong entries in the distribution register was found to be false and that the customers who have



purchased the urea have confirmed that they have actually purchased the quantity that was shown in the distribution register. Further said authority has clearly opined that the sale by the petitioner was found to be correct and that there were no irregularities. In the passing a remark has being made that entries in the new sale register and old sale register appears to be suspicious. It is well settled principles of law that on mere suspicion the authority cannot cancel the license of the petitioner and unless and until it is clearly established by cogent and clear evidence that the petitioner has indulged in some violation. The authority cannot impose drastic punishment of cancellation of license on mere suspicion. Moreover, as seen from the orders the Appellate Authority has not given any reason as to why the findings recorded by the Assistant Director, Plant Protection, Araria, was discarded or not believed.

7. Having regard to the fact that the Appellate Authority did not consider the report submitted by the Assistant Director, Plant Protection, Araria, dated 11.11.2022 vide Memo No. 239 in his order, dated 14.11.2022, passed in Appeal Case No. 58 of 2022-23, this Court deems it fit and proper to set aside the order of Appellate Authority and remand the matter back to the Appellate Authority for considering the appeal afresh. The authority shall take into consideration the report submitted by



the Assistant Director, Plant Protection, Araria, dated 11.11.2022, vide Memo No. 239 while passing the orders.

8. It is needless to mention that before passing any order the petitioner shall be given opportunity of hearing and reasoned order shall be passed duly taking into consideration the explanation submitted by the petitioner.

9. In case the authority wants to take any action on the observations made in the enquiry report the petitioner shall be given a show cause notice seeking his explanation and after giving him opportunity of filing his explanation, necessary action can be taken.

10. The entire exercise shall be completed as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order. Any orders passed shall be communicated to the petitioner.

11. With the observations indicated above, this Writ Petition is **disposed off**.

(A. Abhishek Reddy , J)

Shamshad/-

U			
---	--	--	--

