

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5813 of 2023

Vijay Kumar Singh @ Vijay Singh S/o Late Raghunath Singh, Resident of
Village- Sadalpur, P.S.- Asawan, District- Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Food and Consumer Protection Department, Govt. of Bihar, Patna.
2. The Commissioner, Saran Division, Chapra.
3. The Collector-cum-District Magistrate Siwan
4. The Sub Divisional Officer-cum-Licensing authority, Sadar Siwan.
5. The Block Supply Officer, Andar, District- Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Dhananjaya Nath Tiwari
For the Respondent/s : Mr.Arvind Ujjwal (Sc4)

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

8 12-10-2023 Heard the learned counsels for the parties.

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

“(i) For issuance of appropriate writ/writs, order/orders, direction in the nature of certiorari quashing the order dated 29.11.2022 passed by the learned Secretary, Food and Consumer Protection Department by which the representation filed before the Secretary, Food and Consumer Protection Department was dismissed and confirmed the order of the licensing authority as well as appellate authority and revisional authority by which the PDS license of the petitioner being License No. 406/2016 has been cancelled.

(ii) Further for quashing the revisional order dated 06.08.2021 passed in Supply Revision Case No. 95/2019 by the learned Commissioner, Saran Division, Chapra by which he was pleased to dismissed the statutory revision filed on behalf of the petitioner and affirmed the order dated 11.12.2018 passed by the learned Collector,



Siwan.

(iii) Further for quashing the order dated 11.12.2018 passed in Supply Appeal No. 72/2018-19 by the learned collector by which statutory appeal filed on behalf of the petitioner was dismissed and order of licensing authority cancelling PDS license dated 07.08.2018 was affirmed.

(iv) For quashing the order contained in memo no. 1294 dated 07.08.2018 passed by the Sub Divisional Officer, Sadar Siwan-cum-Licensing Authority by which he was pleased to cancel the PDS license of the petitioner being License No. 406/2016 ”.

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 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 07.08.2018 passed by the Sub-Divisional Officer, the



appellate order dated 11.12.2018 passed by the Collector-cum-District Magistrate as well as the revisional order dated 06.08.2021 passed by the Divisional Commissioner may be set aside and matter remanded back to the Sub Divisional Officer 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. Learned counsel has stated that the authorities have passed a reasoned order and the same does not need any interference from this Hon'ble Court. 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 enquiry report was furnished to the petitioner. Moreover as seen from the second show cause notice dated 04.06.2018 (Annexure 3), the same does not reveals as to what is the proposed action sought to be taken against the petitioner has been mentioned.



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 dated 07.08.2018 passed by the Sub-Divisional Officer, the appellate order dated 11.12.2018 passed by the Collector-cum-District Magistrate as well as the revisional order dated 06.08.2021 passed by the Divisional Commissioner 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, name of the complainants and statements, if any, made by the complainants to the petitioner by giving reasonable time to file his explanation.

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 orders 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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