

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6048 of 2023

=====

Brajnandan Rai, Son of Late Krishandeo Rai, P.D.S, Dealer Village - Naya Gaon, P.S. - Desari, District - Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
2. The Additional District Magistrate, Vaishali.
3. The District Supply Officer, Mahnar, Vaishali.
4. The Sub Divisional Officer, Mahnar, District - Vaishali.
5. The Assistant District Supply Officer, Mahnar, Vaishali.
6. The Block Supply Officer, Sahdei Bugurg, District - Vaishali.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Ms.Usha Kumari Singh, Adv
For the Respondent/s : Mr.Arvind Ujjwal (SC 4)

=====

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

Date : 11-10-2023

Heard the learned counsels for the parties.

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

“(I) For setting aside the order vide Memo no. 779 dated 07.11.2022 passed in PDS Appeal Case No. 36/2022-23 passed in P.D.S.Appeal Case no 36/2022-23 (annexure-5) by the Additional District Magistrate, Vaishali which has been rejected and also for setting aside the order passed by the Sub-divisional Officer Mahnar vide memo no 207 supply dated 10-03-2021 (Annexure-4) by which the license of the petitioner vide license no- 37/2016 has been



canceled.

(II) For order/direction to the respondent's concerned to grant license to the petitioner for P.D.S. dealer for Panchayat Nayagaon west Prakhand Sahdei Bujurge from the date it has been cancelled.

(III) For order/direction commanding the respondents not to grant license to any other person for Panchayat Nayagaon west Prakhand Sahdei Bujurge from the date it has been cancelled.”

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 judgments 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 an alternative and efficacious remedy of filing a revision before the Commissioner. 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 reveals that there is no proposal of the action sought to be taken against the petitioner.



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 dated 07.04.2022 (Annexure 5) passed by the appellate authority and the order dated 10.03.2021 (Annexure 4) passed by the Sub-Divisional Officer are set aside. The matter is remanded back to the Sub-divisional Officer (Respondent No. 4) 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 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 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)

Bhardwaj/-

AFR/NAFR	
CAV DATE	
Uploading Date	17.10.2023
Transmission Date	

