

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6516 of 2023

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Kamta Pandey S/o Late Ram Pujan Pandey R/o Village-Chain Chhapra,
Mahuli Ghat, P.S. Krishnagarh, District Bhojpur at Ara ... Petitioner
Versus

1. The State of Bihar through the Secretary, Food and Consumer Protection Department, Bihar, Patna.
 2. The Collector Cum District Magistrate, Bhojpur at Ara.
 3. The Addl. Collector, Bhojpur at Ara.
 4. The District Supply Officer, Bhojpur at Ara.
 5. Sub-Divisional Officer (Supply), Sadar Ara, Bhojpur.
 6. Block Supply Officer, Barahara, District-Bhojpur at Ara.
 7. Block Supply Inspector, Barahara, District-Bhojpur at Ara. ... Respondents
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Appearance :

For the Petitioner : Mr. Tribhuwan Narayan, Adv.
For the Respondents : Mr. S. Raza Ahmad, AAG V

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

5 05-09-2023 Heard the learned counsel for the parties.

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

“..... for issuance of writ in nature of Mandamus or any other appropriate writ/writs to set aside the order passed by the Sub-divisional Officer (Supply) Sadar Ara, respondent no. 5, vide memo No. 1065/Aa, dated 7.11.2022 (Annexure-4), whereby and where under P.D.S. shop licence of the petitioner, bearing no. 05/2018 has been cancelled and further to remand back the matter before the learned Sub-Divisional Officer, (Supply) Sadar Ara, Bhojpur to pass afresh appropriate order after given proper opportunity to the petitioner and file his reply to the show-cause.”

3. Learned counsel appearing on behalf of the petitioner has stated that the petitioner was granted PDS license



bearing No. 5 of 2018. Counsel has stated that the Block Supply Officer (BSO), Barahra, Bhojpur at Ara, (Respondent No. 6), vide Memo No. 233, dated 20.12.2021, informed the Sub Divisional Officer (SDO), (Supply), Sadar, Bhojpur at Ara, (Respondent No. 5), that he has inspected the two PDS shops on 13.12.2021. That with regard to the shop of the petitioner, the Block Supply Officer (BSO) on the date of inspection has found that the shop was being run by another person who did not produce the stock register, distribution register and POS machine. Thereafter, the BSO has again inspected the shop on 16.12.2021 and on finding some irregularities he has recommended for cancellation of the PDS license of the petitioner. The SDO based on the report of the BSO has issued the show cause notice to the petitioner vide Letter No. 33, dated 12.01.2022. The petitioner gave a suitable explanation to the show cause notice on 24.01.2022. Learned counsel for the petitioner has stated that the show cause notice, dated 12.01.2022, issued by the SDO did not contain the copy of the enquiry report. However, the petitioner was able to subsequently obtain a copy of the said enquiry report. That the Sub Divisional Officer, (Supply) Sadar, Ara, thereafter, issued another show cause notice to the petitioner vide Letter No. 165,



dated 02.03.2022, giving the petitioner only two days time for reply. That without giving him opportunity to the petitioner to either participate in the proceeding or hearing the petitioner, the Sub Divisional Officer passed the order cancelling the PDS license issued in favour of the petitioner vide Memo No. 1065/Aa, dated 07.11.2022. Learned counsel has stated that the order passed by the Sub Divisional Officer cancelling the PDS license of the petitioner is liable to be set aside on the ground that the enquiry report was enclosed to the show cause notice, the petitioner has not been given ample timing to file his explanation to the show cause notice, the petitioner was not heard nor allowed to participate in the proceedings. It is further stated that the order of cancellation of the Sub Divisional Officer was on the basis of the opinion of the Block Supply Officer, Brahara, Bhojpur at Ara, without any independent application of mind by the Sub Divisional Officer. Learned counsel has also stated that the order was passed without adverting to the explanation submitted by the petitioner.

4. Per contra, the learned counsel appearing on behalf of the respondents has stated that the Writ Petition filed by the petitioner is not maintainable as the petitioner has an alternative and efficacious remedy of filing a statutory appeal before the



District Magistrate against the order of the Sub Divisional Officer. However, the petitioner has straightaway approached this Hon'ble Court without exhausting the statutory remedy of appeal and the same cannot be permitted. Learned counsel for the respondents has also stated that the explanation alleged to have been submitted by the petitioner was not received by the Sub Divisional Officer, therefore, left with no other alternative the Sub Divisional Officer has passed the order on the available material. Learned counsel has stated that the order passed by the Sub Divisional Officer is well reasoned order, which does not call for any interference by this Hon'ble Court and prayed for dismissal of the present Writ Petition.

5. Admittedly, as seen from the record, the petitioner was initially served the show cause notice on 12.01.2022, for which the petitioner submitted his explanation on 24.01.2022. Thereafter, the Sub Divisional Officer has issued another show cause notice vide Letter No. 165, dated 02.03.2022.

6. A perusal of the second show cause notice shows that the petitioner was given only two days time to file his explanation. More over, as seen from the record, the petitioner has submitted his explanation on 24.01.2022. The copy of the explanation shows an endorsement that the respondents-



authority have received the explanation on 24.01.2022, therefore, the contention of the respondents that the petitioner has not submitted any explanation is contrary to the record. More over, in the second show cause notice issued by the Sub Divisional Officer only two days time has been given to the petitioner to submit his explanation. On this ground also the impugned order is liable to be set aside. This Court as well as the Hon'ble Supreme Court in catena of cases has held that whenever show cause notice is issued ample time should be given to the person to submit his explanations. The Courts have held that a minimum period that was expected to be given by the authorities for filing explanation to the show cause notice should not be less than seven days. However, in this particular case the petitioner was only given two days which is against the principles of natural justice and equity. Further, the impugned order does not advert to the explanation submitted by the petitioner to the first show cause notice.

7. Having regard to the above mentioned facts and circumstances, this Court has no other option but to set aside the impugned order and remand the matter back to the authority concerned for passing orders afresh.

8. It is needless to mention that before passing any



orders, the petitioner should be put on notice and given an opportunity of hearing. If any new material is sought to be relied by the authorities concerned the copy of the same shall be served on the petitioner and the petitioner shall be given an opportunity of submitting his explanation.

9. 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.

10. With the above directions, the present Writ Petition is allowed to the facts indicated above.

(A. Abhishek Reddy , J)

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