

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7513 of 2022

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M/s Anushka Khad Beej Bhandar, Nagariprabha, (Kochadhaman) Kishanganj,
through its Proprietor Om Prakash Sinha, aged about 34 Years (Male), S/o
Late Vijay Kumar Sinha, Resident of Village-Nagariprabha, P.S.-
Kochadhaman, District-Kishanganj ... Petitioner

Versus

1. The State of Bihar through Director, Agriculture Dept. Bihar, Patna.
2. The Director, Agriculture Bihar, Patna.
3. The Joint Director, Agriculture, Purnea Division, Purnea.
4. The District Agriculture Officer, Kishanganj.
5. The Block Agriculture Officer, Kochadhaman, Kishanganj. ... Respondents

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Appearance :

For the Petitioner	:	Mr. N.K. Agarwal, Sr. Adv. with M/s Dhananjaya Nath Tiwari & Kumar Rajdeep, Advs.
For the Respondents	:	Mr.Ravi Kumar, AC to AAG XIII

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

3 04-09-2023 Heard the learned counsel for the parties.

2. The present writ petition has been filed for the

following relief(s) :

“..... for setting aside the order contained in Memo No. 215/Ji Kri, dated 24.01.2022 passed by the District Agriculture Officer, Kishanganj by which the retail license of the petitioner being license No. 53/2018-19(R) issued under the provisions of the Fertilizer Control Order, 1985 has been cancelled even without issuance of show cause notice and also for quashing the Appellate order dated 14.03.2022 passed in Appeal Case No. 34/2021-22 by the learned Joint Director, Agriculture, Purnea Division, Purnea by which he was pleased to dismissed the appeal and affirmed the order dated 24.01.2022 passed by the learned District Agriculture Officer, Kishanganj and further be pleased to restore the license of the petitioner.”



3. Learned counsel for the petitioner has stated that the order which has been impugned in the present Writ Petition is liable to be set aside on the sole ground that the order is passed in total violation of the principles of natural justice and equity. Learned has stated that the petitioner was not put on prior notice before passing the order of cancellation of the license. Learned counsel has stated that the inspection of the subject premises took place on 23.01.2023 by the Joint Director, Agriculture, Purnea Division, Purnea and, thereafter, without putting the petitioner on notice or giving him an opportunity of hearing the order of cancellation of retail license was passed on 24.01.2022. Though the petitioner had preferred an appeal, the Appellate Authority has dismissed the same in a mechanical manner without adverting to the ground raised by the petitioner. Therefore, learned counsel has stated that the Writ Petition may be allowed and the impugned order set aside.

4. Per contra, the learned counsel appearing on behalf of the respondents has tried to defend the orders of the appellate as well as order of cancellation. Learned counsel has stated that on inspection of the premises of the petitioner there was found certain irregularities and an enquiry report was sent to the District Agriculture Officer, Kishanganj. Thereafter, the District Agriculture Officer, Kishanganj, duly taking into account the



enquiry report, dated 23.01.2022, sent by the Joint Director, Agriculture, Purnea Division, Purnea, has passed a reasoned order cancelling the retail license of the petitioner. Thereafter, the said cancellation order was confirmed by the Appellate Authority, therefore, prayed this Hon'ble Court to dismiss the present Writ Petition.

5. A perusal of the documents, filed by the petitioner, shows that the inspection of the subject property was done on 23.01.2022 by the Joint Director, Agriculture, Purnea Division, Purnea, (Respondent No. 3) and a report was sent to the District Agriculture Officer. The District Agriculture Officer has passed the order of cancellation of the license of the petitioner vide order, dated 24.01.2022. The order of cancellation does not in any manner reflect that the petitioner was given prior notice to submit his explanation or giving him an opportunity of hearing before passing the order of cancellation. The fact that the petitioner was not put on notice before passing the orders by the District Agriculture Officer has not been denied in the counter affidavit filed by the respondents, therefore, the said order has to be necessarily set aside on the ground that the same is in violation of the principles of natural justice and equity. The passing of the cancellation orders by the District Agriculture Officer without giving any show cause notice to the petitioner or



giving him an opportunity of hearing is against the principles of natural justice and equity. The authority concerned is expected to put the petitioner on notice duly indicating the charges against him and call for an explanation before passing any adverse orders. It is pertinent to note that the enquiry report was sent by the Joint Director, Agriculture, Purnea Division, Purnea, on 23.01.2022 and on the very next date, i.e., 24.01.2022 the District Agriculture Officer has passed the order of cancellation without putting the petitioner on notice and calling for his explanation. Once it is held that order passed by the District Agriculture Officer is against the principles of natural justice and equity and held to be bad in law, the appellate order cannot stand on its own and has to be necessarily set aside.

6. In the judgment passed on 02.03.2022 in the case of Pinki Kumari @ Pinki Singh Vrs. the State of Bihar & Ors. (C.W.J.C. No. 21135 of 2021) this Hon'ble Court has held as under :

“.....institute of Chartered Accountants of India Vs. L.K. Ratna; 1986 (4) SCC 537 in which, it has been held that even if the appellate decision cannot be faulted for being a reasoned order, but if it was against an order by the original/Licensing Authority which did not actually apply its mind, such manifest original defect could not be restituted/cured by the Appellate Authority.”

6. Having regard to the above mentioned facts and circumstances, the order, dated 14.03.2022, passed by the



Appellate Authority as well as the order, dated 24.01.2022, of the District Agriculture Officer are set aside and the matter is remanded back to the District Agriculture Officer concerned. In case the authority wants to take any action, the petitioner should be put on notice duly indicating the charges against him and giving him reasonable time to submit his explanation. Thereafter, the authority concerned shall pass orders on its own merits duly giving an opportunity of hearing to the petitioner. Any order passed shall be communicated to the parties. As the license of the petitioner is still subsistence, the petitioner shall be allowed to operate his shop without any hindrance.

7. With the above directions, the Writ Petition is **allowed.**

(A. Abhishek Reddy , J)

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