

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8472 of 2023

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Mittal Mandal, Son of Shri Darbari Mandal, Resident of Village- Biharipur,
P.S.- Nathnagar, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Patna.
2. The Divisional Commissioner, Bhagalpur,
3. The District Magistrate, Bhagalpur.
4. The Sub Divisional Officer, Bhagalpur.
5. The Block Supply Officer, Nathnagar, Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. N. K. Agrawal, Sr. Advocate Mr. Kumar Rajdeep, Adv. Mr. Arvind Kumar, Adv
For the Respondent/s	:	Mr. Arvind Ujjwal (Sc 4)

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

5 08-11-2023 Heard the learned counsels for the parties.

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

“(i) For quashing the Order dated 23.01.2023 passed by the Sub-Divisional Officer, Bhagalpur by which P.D.S. license no. 31/2016 of the petitioner has been cancelled is liable to be set-aside as same has been passed in violation of principles of Natural Justice inasmuch as the Impugned Order has been passed without considering the facts and circumstances of the case.”

3. Learned counsel appearing on behalf of the petitioner has stated that the show cause notice issued by the Sub-Divisional Officer vide Letter No. 1473 dated 18.11.2022



does not propose the action sought to be taken against the petitioner. That even in the second show cause notice, there is no proposal for cancelling the license of the petitioner and the authority has only said as to why action should not be taken against the petitioner. Learned counsel appearing on behalf of the petitioner has stated that the authorities concerned has issued the show cause notice vide Letter No. 1473 dated 18.11.2022 (Annexure P/3) for which the petitioner has given a suitable explanation (Annexure P/4) and enclosed the affidavits of the consumers. However, the impugned order has been passed by the Sub-Divisional Officer vide order dated 23.01.2023 (Annexure P/5) without adverting to the affidavits given by the consumers. Learned counsel has stated that the authorities concerned contrary to the provisions of the Act, the principles of natural Justice and equity has passed the impugned order without there being an iota of evidence to substantiate the allegation made by the authorities.

4. This Court in CWJC No. 2477 of 2019 vide order dated 29.04.2019 has held as under;

“The petitioner submitted his reply along with the affidavit(s) of the consumers but those affidavits were not accepted by the Sub-Divisional Officer, Nimchak Bathani, Gaya saying that those affidavit(s) have been managed. In the



opinion of this Court, once the petitioner was able to place on record the affidavit(s) of the consumers, the veracity of the complaint were required to be examined by conducting necessary verification by the Sub-Divisional Officer and only thereupon an independent view of the matter could have been taken. It has not been done in the present case. For these reasons the impugned order is liable to be held bad.”

5. As seen from the record, the officer concerned has not conducted any enquiry to test the veracity of the statements made by the consumers. Moreover, the officer has not taken into consideration the affidavits of the consumers submitted by the petitioner. There is no evidence to substantiate the allegations made against the petitioner through independent witness or any consumers, the authorities concerned ought to have examined the consumers and given an opportunity to the petitioner to cross-examine the consumers, but the same was not done.

6. Having regard to the above facts and circumstances, this Court is of the opinion that the impugned order is liable to be set aside and the matter remanded back to the Sub-Divisional Officer concerned for passing orders afresh duly taking into consideration the explanation submitted by the petitioner and the affidavits of the consumers.

7. Accordingly, the order of the Sub-divisional Officer dated 23.01.2023 is set aside and the writ petition is allowed and



remanded back to the authority for passing order afresh. The Sub-Divisional Officer concerned shall put the petitioner on notice and give an opportunity of leading any evidence and the matter shall be decided on merits in accordance with law. The Sub-Divisional Officer concerned shall endeavor to see that the case is disposed off as expeditiously as possible preferably within a period of ten weeks from the date of receipt of a copy of this order. It is needless to mention that before passing any order, the petitioner shall be given an opportunity of hearing. Any order passed shall be communicated to the parties.

8. With the above direction, the present writ petition stands allowed.

(A. Abhishek Reddy , J)

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