

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7681 of 2023

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Surendra Giri S/o Ramashra Giri Resident of Village-Gochhi, P.O.-Keshariya,
P.S.-Keshariya, District-East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
2. The Commissioner, Tirhut Division, Muzaffarpur.
3. The Collector, East Champaran, Motihari.
4. The Sub Divisional Officer-Cum-Licensing Authority, Chakiya, East Champaran.
5. The Additional District Supply Officer, Chakiya, East Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dhananjaya Nath Tiwari, Adv.
For the Respondent/s : Mr. S. Raza Ahmad (Aag5)

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

3 13-09-2023 The present writ petition has been filed for the

following reliefs:

“(i) For issuance of appropriate writ/writs, order/orders, direction in the nature of certiorari quashing the order dated 09.02.2023 passed in PDS Revision Case No. 88/2022 passed by the Learned Commissioner, Tirhut Division, Muzaffarpur whereby and where under he has dismissed the revision petition and confirmed the order dated 23.01.2021 passed by the Learned District Magistrate, East Champaran at Motihari by which the statutory appeal was dismissed.

(ii) Further for quashing the order dated 23.01.2021 passed in PDS



License Case No. 15/2018 passed by the Learned Collector- cum-District Magistrate, East Champaran at Motihari whereby and where under he has confirmed the order dated 28.08.2018 passed by the Learned S.D.O.-cum-Licensing Authority, Chakia by which the PDS License of the petitioner was cancelled.

(iii) Further for quashing the order dated 28.08.2018 passed by the Learned S.D.O. -cum-Licensing Authority, Chakia by which the PDS license of the petitioner being License No. 6/2007 has been cancelled.

(iv) Further for issuance appropriate writ/order/direction in which the petitioner found to be entitled in the facts and circumstances of the case.”

1. Learned counsel for the petitioner has stated that the petitioner was granted PDS license vide license bearing No. 6 of 2007 and there were no complaints against the petitioner till date from any consumer. That the Sub-Divisional Officer (Respondent No. 04) based on the enquiry report submitted by the Block Supply Officer (Respondent No. 05) has issued show cause notice to the petitioner vide Letter No. 1058 dated 31.05.2018 (Annexure-1). The petitioner has given a detailed explanation to the show cause. Thereafter, the SDO has passed the order of cancellation of the license. Learned counsel for the petitioner has stated that the show cause notice issued to the



petitioner was not enclosed with the copy of the enquiry report submitted by the Block Supply Officer. Further, it is stated that the non-supply of the enquiry report along with the show cause notice is contrary to the judgment of this Hon'ble Court in **2013(3) PLJR, 249 (Krishna Kumar Srivastava Vrs. the State of Bihar & Ors.)** and therefore the order of the Sub-Divisional Officer cancelling the license of the petitioner has to be necessarily set aside. That the Appellate as well as the Revisional Authority did not consider this aspect and passed the order in a pedantic and mechanical manner. Learned counsel for the petitioner has relied on the order passed by this Hon'ble Court in **CWJC No. 19456 of 2019 (Arun Chaudhary Vrs. the State of Bihar & Ors.)** to contend that once the original order is found to be defective, the same cannot be supported by the appellate as well as revisional authority therefore, prayed this Hon'ble Court to allow the present writ petition by setting aside the orders impugned in the present writ petition.

2. *Per contra*, Learned counsel for the respondents has vehemently opposed the very maintainability of the writ petition and stated that the authorities concerned duly taking into consideration the explanation submitted by the petitioner have passed the orders and there is no need to interfere with the



orders passed by the authorities concerned.

3. A perusal of the show cause notice issued by the Sub-Divisional Officer reveals that the Sub-Divisional Officer has not enclosed the copy of the enquiry report along with the show cause notice to the petitioner. Moreover, the explanation submitted by the petitioner has not been considered in a proper perspective by the authorities concerned.

4. This Court in the judgment reported in **2013(3) PLJR, 249 (Krishna Kumar Srivastava Vrs. the State of Bihar & Ors.)** has held as under:

“This Court has repeatedly made it clear that if a show cause notice is issued to a PDS dealer by the licensing authority on the basis of statement of consumer/beneficiaries attached to the shop in respect of non-supply or inadequate supply of food grains or charging higher amount than prescribed, names of such consumers/beneficiaries should be furnished to the dealer and, if any statement has been made on the basis of which any enquiry report has been submitted, copies of such statement and the report should also accompany the show cause. This basic requirement of fair play in action is only for compliance of Principles of Natural Justice. If the show cause notice is vague and does not contain particulars in support of the allegations and is not accompanied with the



relevant materials which may be considered by the licensing authority at the time of passing final orders, the same has to be termed as giving inadequate opportunity to the PDS license holder.”

5. In ***CWJC No. 19456 of 2019 (Arun Chaudhary Vrs. the State of Bihar & Ors.)*** it has been held as follows;

“.... the learned counsel for the petitioner has shown to this court that though the original order of cancellation of license runs in around three pages but the licensing authority has only recounted the grounds raised by the petitioner and has disposed of those grounds in one line that those are unsatisfactory.

What is the reason for the Licensing Authority to hold such grounds to be unsatisfactory has not been stated.

We do not get any idea from such order as to whether the petitioner was entitled to be retained as a license or that the order of cancellation of license was correct on the prevalent set of facts.

Since the defect in the original order cannot be restituted in an appeal for the reasons that the petitioner would not know in his capacity as appellant, what to challenge and on what grounds, the provision of appeal becomes rather otiose.”

6. Having regard to the above law laid down by this Hon'ble Court in the above mentioned cases, this Court is constrained to set aside the orders passed by the Revisional, the



Appellate Authority as well as that of the Sub Divisional Officer and remand the matter back to the Sub Divisional Officer, respondent No. 04 for passing orders afresh duly putting the petitioner on notice. The copy of the enquiry report shall be served on the petitioner. The petitioner shall be given an opportunity of filing his explanation and also an opportunity of hearing before passing any orders.

7. The entire exercise shall be completed as expeditiously as possible, within a period of three months from the date of receipt of a copy of this order. Any decision taken shall be communicated to the petitioner.

8. The writ petition is allowed to the extent indicated above.

(A. Abhishek Reddy, J)

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