

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9047 of 2023

Meena Sinha W/o Late Chetnarayan Bhakat, Resident of Srirampur, P.O.-
Chandpura Block, Rahopur, P.S.- Raghopur, District- Vaishali at Hajipur.
... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Food and Civil Supply Department, Govt. of Bihar, Patna.
2. The Divisional Commissioner, Tirhut Division, Muzaffarpur.
3. The District Magistrate, Vaishali.
4. The Sub-Divisional Officer, Vaishali.
5. The Block Supply Officer, Vaishali. ... Respondents

Appearance :

For the Petitioner : Mr.Akash Chaturvedi, Adv.
For the Respondents : Mr.Arvind Ujjwal, SC IV

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

2 22-09-2023

Heard the learned counsel for the parties.

2. The present writ petition has been filed for the

following relief(s) :

I. For issuance of writ in the nature of certiorari for quashing of the order dated 25.04.2022 passed in PDS Appeal No. 96 of 2021 by the Divisional Commissioner, Tirhut Division, Muzaffarpur whereby the revision preferred by the petitioner against the appeal order as well as the original order passed by the Sub-Divisional Officer, Vaishali cancelling the PDS license of the petitioner has been rejected without assigning any cogent reason for his dissatisfaction being wholly illegal arbitrary.

II. For issuance of writ in the nature of certiorari for quashing of order dated 04.09.2019 passed in Appeal Case No. 282 dated 2016-17 by the District Magistrate, Vaishali at Hajipur whereby the appeal preferred by the petitioner against the order of cancelation of cancellation of his license issued under the Public Distribution System has been dismissed without assigning any cogent reason for his



dissatisfaction which is wholly illegal arbitrary.

III. For issuance of writ in the nature of certiorari for quashing of the order dated 02.11.2016 passed by the Sub-Divisional Officer, Hajipur issued vide memo no. 992 dated 02.11.2016 whereby the license issued to the petitioner under the public distribution system has been cancelled without affording any opportunity of hearing in complete violation of principles of natural justice which is wholly illegal, arbitrary and without jurisdiction.

IV. For issuance of writ in the nature of declaration holding that the order/orders passed by the authorities cancelling the PDS license of the petitioner is wholly illegal arbitrary and without jurisdiction and the same has been passed in complete violation of principles of natural justice which has got no legs to stand in the eye of law.

V. For issuance of writ in the name of mandamus directing the respondent to restore the PDS license of the petitioner issued under the public distribution system and resume the supply of food grains with immediate effect

VI. For any other relief/s to which the petitioner is found entitled to in facts and circumstances of the present case.

3. Counsel for the petitioner has stated that the impugned order of cancellation passed by the Sub-Divisional Officer on 02.11.2016 is liable to be set aside on the sole ground that the same is in violation of the principles of natural justice and equity. Learned counsel has stated that the Block Supply Officer has conducted the inquiry on 09.05.2016 and, thereafter, a show-cause notice was issued to the petitioner on 13.07.2015 for which the petitioner has given a suitable reply on



11.08.2015. Learned counsel states that 2nd show cause notice issued vide Memo No. 101, dated 23.01.2016, was not served on the petitioner. Learned counsel states that 3rd show cause notice vide Memo No. 564, dated 25.05.2016, was issued, but the same was also not served to the petitioner without issuing the 2nd and 3rd show cause notice the authority has passed the order of cancellation. Learned counsel has stated that though the petitioner has taken this specific ground before the Appellate Authority, but the same was not considered and the authority has dismissed the appeal confirming the order of cancellation and passed the order in a mechanical manner.

4. Learned counsel has relied on the judgment of this Hon'ble Court in CWJC No. 17863 of 2015, dated 11.05.2017 to buttress his case. Therefore, learned counsel has prayed that the impugned orders may be set aside and the matter remitted back to the authority concerned for passing order afresh after serving the copy of the show-cause notice dated 23.01.2016 and 25.05.2016 on the petitioner and giving him an opportunity of submitting a fresh explanation.

5. Per contra, the learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the present writ petition and stated that the present writ petition is liable to be dismissed on the sole ground that the petitioner is have an alternative and efficacious remedy



of filing a revision before the Divisional Commissioner. Learned counsel has stated that both the authorities have held that the petitioner has violated the provisions of the control order and the same do not require any interference from this Hon'ble Court. Learned counsel has therefore prayed this Hon'ble Court to dismiss the present writ petition.

6. A perusal of the order of cancellation passed by the Sub Divisional Officer shows that the petitioner was initially given a show-cause notice on 13.07.2015 and, thereafter, his explanation was submitted on 11.08.2015. However, the order dated 02.11.2016, which is impugned, reflects that in the present CWJC, second inspection has taken place on 23.01.2016 leveling fresh charges on the petitioner. Though the order reflects that a show-cause notice was issued to the petitioner, there is no proof that a copy was served on the petitioner.

7. The passing of the order of cancellation on 02.11.2016 by the Sub Divisional Officer depending on the show cause notice, dated 23.01.2016 and 25.05.2016 is bad in law and the same is in violation of the principles of natural justice and equity. Therefore, on this ground alone the impugned order is liable to be set aside and the same is accordingly set aside. Once the order of the primary authority is held to be bad and set aside, the order of the Appellate Authority is also liable to be set aside as it cannot stand on its own. The matter is



remanded back to the Sub Divisional Officers for passing the order afresh duly serving a copy of the fresh show-cause on the petitioner along with any inquiry report. The petitioner shall be given an opportunity to submit his explanation to the said show cause notice. Thereafter, on receipt of the explanation from the petitioner, the authority concerned shall pass a reasoned order strictly in accordance with law duly taking into consideration the explanation submitted by the petitioner. The entire exercise shall be completed as expeditiously as possible preferably within a period of eight weeks from the date of receipt of the explanation from the petitioner. Any order passed shall be communicated to the party.

8. With the above direction, the writ petition stands disposed off to the extent indicated.

(A. Abhishek Reddy , J)

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