

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7578 of 2023

Prakash Kumar Kedia S/o Late Vijay Kumar Kediya, Resident of Asarganj,
Marwari Tola, P.S.-Asarganj, District-Munger, Proprietor of M/S Vikash
Krishi Kendra at Berari, Post-Asarganj, P.S.-Bath, District-Bhagalpur.
... Petitioner

Versus

1. The State of Bihar through Director, Agriculture, Bihar, Patna.
2. The District Agriculture Officer, Bhagalpur.
3. The Block Agriculture Officer, Sultanganj, Bhagalpur. ... Respondents

Appearance :

For the Petitioner : Mr.Dhananjaya Nath Tiwari, Adv.
For the Respondents : Mr.Sarvesh Kr. Singh, AAG XIII

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

2 15-09-2023

Heard learned counsel for the parties.

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

“.....this application is being filed on behalf of the petitioner challenging the order contained in Memo No. 3575 dated 31.12.2021 passed by the Disciplinary Authority, Bhagalpur, by which he was pleased to cancel the fertilizer retail license of the petitioner being license no. CFK29051501463/2019-20 granted under the provisions of the Fertilizer Control Order, 1985 even without issuance of show cause notice to the petitioner and further be pleased to restore the fertilizer retain license of the petitioner.”

2. Learned counsel for the petitioner has stated that the Respondent No. 3, i.e., the Block Agriculture Officer has visited the shop of the petitioner on 30.12.2021 and having found that the shop is closed and that crowd was gathered at the



shop. After making enquiries the Block Agriculture Officer submitted a report to the District Agriculture Officer, the District Agriculture Officer without putting the petitioner on notice or calling for any explanation has cancelled the license of the petitioner on the very next day, i.e., 31.12.2021. Learned counsel has stated that the action of the District Agriculture Officer in cancelling the license of the petitioner without issuing any show cause notice to the petitioner or giving him an opportunity for submitting his explanation is contrary to the principles of natural justice and equity, therefore, prayed this Hon'ble Court to set aside the impugned order.

3. Per contra, the learned counsel appearing on behalf of the respondents has stated that the petitioner has alternate and efficacious remedy of filing an appeal under Rule 32 of the Fertilizer (Control) Order, 1985. That without availing the said remedy has straightaway approached this Hon'ble Court and the same cannot be permitted. Learned counsel has further stated that on the day the inspection has taken place the petitioner had unauthorizedly closed the shop due to which the farmers had gathered at the shop and were denied the fertilizers during the peak rabbi season. Therefore, the authority had to take necessary action by cancelling the license of the petitioner.

4. A perusal of the documents filed revealed that on



30.12.2021 the Block Agriculture Officer had inspected the shop of the petitioner and found that the shop was closed. The Block Agriculture Officer found that many farmers had gathered at the shop and expressed their grievance that the shop was closed without any prior intimation and they were unable to purchase the fertilizers. The Block Agriculture Officer submitted a report to the District Agriculture Officer on the very same day recommending for cancellation of the license of the petitioner.

5. Admittedly, the District Agriculture Officer without putting the petitioner on notice or calling for an explanation has straightaway cancelled the license of the petitioner on the very next day, i.e., 31.12.2021. The above action of the District Agriculture Officer in cancelling the license of the petitioner without issuing any notice is in violation of the principles of natural justice and equity. The minimum that is expected from an authority before passing any adverse orders against a person is to put that person on notice, call for his explanation and then pass a necessary order, but, in this particular case the said procedure has not been followed by the authority concerned. The fact that the petitioner was not put on notice has not been denied by the official respondents in their counter affidavit.



Even though the counsel for the respondents has stated that the petitioner has an alternative and effective remedy of filing an appeal, the said contention is rejected for the simple reason that the order of cancellation is without notice to the petitioner and in violation of principles of natural justice and equity, more over, no useful purpose would be achieved even if the petitioner is relegated to the Appellate Authority. More over, this Hon'ble Court in C.W.J.C. No. 8479 of 2021 on 01.04.2022 held as under :

“..... Turant Lal Paswan vs. The State of Bihar & Ors. reported in 2012(3) PLJR 583, paragraph 4 of which reads as under :-

“4. We find that admittedly the petitioner did close the shop on the particular day. Though, the action of keeping the shop closed on one particular day was in breach of the terms and conditions of the licence and may not be justified, was not such grave violation that would entail cancellation of licence.”

6. In the light of the above mentioned facts and circumstances, this Court is constrained to set aside the impugned order and remand the matter back to the District Agriculture Officer. The District Agriculture Officer before taking any action shall put the petitioner on notice and call for an explanation giving reasonable time. After the receipt of the explanation the District Agriculture Officer shall pass a reasoned order in accordance with law duly taking into account



the explanation submitted by the petitioner. The officer concerned shall also take into account the judgment of this Court passed in C.W.J.C. No. 8479 of 2921 while passing the orders. 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.

7. This Writ Petition stands **allowed** to the extent indicated above.

(A. Abhishek Reddy , J)

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