

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9132 of 2022

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Rojeed Alam Son of Late Abdul Jalil, Resident of Mohalla - Chak Abdul
Wahid, Police Station- Kazi Mohammadpur, District - Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Secretary, Department of Food and Civil Supply, Government of Bihar,
Patna.
3. The Collector, Muzaffarpur.
4. The Sub Divisional Officer, East Muzaffarpur.
5. The District Supply Officer, Muzaffarpur.
6. The Block Supply Officer, Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vinay Kumar

For the Respondent/s : Mr. Alok Ranjan

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

2 16-01-2023 Heard Mr. Vinay Kumar, the learned advocate

for the petitioner and Mr. Alok Ranjan, the learned

counsel for the State.



For lesser amount of food grains found in the store of the petitioner as compared to the reading of the E-POS machine, a notice was issued to him to explain as to why FIR be not registered against him.

The learned counsel for the petitioner submitted that the contemplated course of action in the notice, referred to above, dated 22.06.2021 was the lodging of a criminal case for breach of the provisions under the E.C. Act, 1955 and not for a proceeding under the Bihar Targeted Public Distribution System (Control) Order, 2016 for either suspension of license on the FIR being lodged or cancellation of license for breach of any of the terms of licensee.

Nonetheless the petitioner replied to the aforesaid notice in detail, explaining that the assumption of the Licensing Authority that the petitioner has sold the government food-grains in black-market, is based on wrong premise. Physical verification of the stock if compared with the reading of the E-POS machine would



not disclose anything unless the reading of E-POS is without any defect.

It had been the consistent case of the petitioner that for technical reasons, more often than not, the reading of E-POS machine is not correct as many a times it does not generate the receipts and therefore, perforce, the dealers have to record the disbursal manually.

This is not an isolated instance with the petitioner.

On a general complaint of the calibration and reading of E-POS machine being defective, the secretary of the Food and Consumer Protection Department communicated with all the concerned functionaries under the Public Distribution System and made them aware that for finding shortage of food grains in the PDS stores, physical verification would be necessary.

This guideline, though was shown to have been followed in many cases, but it appears that in the



present case, the same was not followed. Further, the rationale behind the necessity of physical verification is that in case of E-POS not functioning properly, the stock position could be verified only manually but then the result of manual verification has to be compared with manual recording of the opening balance and not the opening balance which is recorded digitally and erroneously on E-POS machines.

Therein lies the difficulty for any dealer to explain the shortage which is the case with the petitioner.

The petitioner thus contends that this explanation of the petitioner of verification of the stock position being compared with the opening balance recorded in the E-POS machines had created difficulties but it was not considered in the correct perspective by either the Licensing Authority or the Appellate Authority.

Apart from this, Mr. Vinay Kumar has laid lot of stress on the ground that the notice is defective so far



as it relates to the culmination of the proceedings under the Bihar Targeted Public Distribution System (Control) Order, 2016 whereby his license has been cancelled.

After having gone through the notice, the original order of cancellation of license by the Licensing Authority and the appellate order, we find that this aspect has not been gone into in the correct perspective and, therefore, the petitioner's license has been cancelled on the assumption that any shortage so calculated only reflects that food grains have been sold in black market.

The petitioner thus contends that such a-posteriori assumptions cannot be sustained in the eyes of the law.

We find force in the submission of the learned counsel for the petitioner.

For the reason afore-stated, we set aside the order passed by the Licensing Authority as also the Appellate Authority and remit the matter to the Licensing



Authority to afford the petitioner a fresh notice in correct form, intimating him the contemplated course of action.

Should it be found that the food grains were short, such fresh notice shall be issued to the petitioner within a period of 15 days of the receipt/ production of a copy of this order, which shall be responded to by the petitioner within the next 15 days.

The Licensing Authority thereafter, on going through the response of the petitioner shall pass a final order within a further period of 60 days, giving reasons for his conclusions, which shall be made available to the petitioner, forthwith.

The petition stands allowed and disposed accordingly.

(Ashutosh Kumar, J)

(Satyavrat Verma, J)

GauravSinha/-
Sunil Kumar

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