

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20827 of 2018

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Ramnaresh Tiwary son of Late Hardev Tiwary, resident of Village- Repura
Rampur Vishwanath, Police Station- Saraiya, Block- Saraiya, District-
Muzaffarpur.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
4. The Sub Divisional Officer, Muzaffarpur West.
5. The Block Supply Officer, Saraiya, Muzaffarpur West.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anand Kumar Ojha, Adv.
For the Respondent/s : Mr. S. Raza Ahmad- Aag5

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

Date : 16-08-2023

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

*"That the Petitioner in the instant writ
application prays for quashing of the Order
contained in Memo No. 2362 dated 21.09.2016
passed by the Respondent No. 4 issuing show
cause notice on non-est ground, for quashing the
Order contained in Memo No. 2872 dated
26.10.2016 cancelling the PDS License No.
28040024/08 and for quashing the Appellate order
dated 24.08.2018 passed in Supply Appeal Case
No 32/2016-17 on the ground that the Authorities
have proceeded on the vague allegations without
declaring the name of the consumers and without
disclosing the nature of complaint made by the
complainant with particulars. The order of
cancellation and appellate order both are liable to*



be quashed as no statement of consumer was made and nothing in the name of enquiry report/complaint were handed over to the Petitioner hence in violation of the orders of the Hon'ble Court the cancellation order was passed and affirmed by the Appellate Authority."

2. Learned counsel appearing on behalf of the petitioner has stated that the impugned order passed by the Respondent No. 4 i.e. The Sub Divisional Officer, Muzaffarpur (West) vide Memo No. 2872 dated 26.10.2016 for cancelling the PDS license of the petitioner bearing License No. 28040024/08 and that of the appellate authority vide order dated 24.08.2018 passed in Supply Appeal Case No. 32/2016-17 is contrary to the provisions of the Act illegal and bad in the eye of law.

3. Learned counsel has stated that the petitioner has been running the PDS Shop since last more than 33 years without any complaint from any quarters and even the inspection which was done on 28.08.2016 showed that there were no irregularities in the distribution of the commodities, that the stock register was maintained properly and there were no complaints from any of the consumers. Even though, the petitioner has submitted a detailed reply to the show-cause notice, the same was not considered by the authority concerned and without application of mind, the



Respondent No. 4 has passed the order cancelling the PDS license of the petitioner.

4. Learned counsel has stated that the petitioner was not supplied with the inquiry report nor any consumer was examined by the authority concerned before passing the impugned order of cancellation. Even the appellate authority has passed the order in a mechanical manner without adverting to the grounds raised by the petitioner in the appeal.

5. Learned counsel has relied on the judgment of this Court passed in C.W.J.C. No. 253 of 2014 to buttress his contention.

6. Per contra, the learned counsel appearing on behalf of the respondents has stated that the present writ petition is not maintainable as the petitioner has an alternate and effective remedy of filing a revision against the orders of the Appellate Authority.

7. Learned counsel has stated that the petitioner was provided ample opportunity before passing the impugned order and as the irregularities against the petitioner were found to be grave, the authority had no other option but to cancel the PDS license of the petitioner and, therefore, prayed this hon'ble Court to dismiss the present writ petition.



8. A perusal of the show-cause notice as well as the impugned order passed by the Respondent No. 4 shows that one of the major allegations against the petitioner were that he has not maintained the Notice Board properly. Other than the said allegation, there are no other complaints against the petitioner from the consumers/ beneficiaries. This Court in CWJC No. 253 of 2014 vide order dated 11.03.2015 under similar circumstances has held as under:-

"In my opinion, irregularities in maintenance of notice board or maintenance of the stocks within the premises of the petitioner are too trivial and cannot form a basis for cancellation of licence. No doubt there were other serious charges against the petitioner regarding non-issuance of cash-memo to the consumers, distribution of lesser amount of kerosene oil and non-distribution of food-grains but surprisingly even while making such allegations, the names of such consumers who are dissatisfied by such action of the petitioner are conspicuously missing. The allegations are sweeping in nature without reference to any specific consumer.

In my opinion the non-supply of the enquiry report conducted by the District Level Committee which is the foundation for issuance of show cause notice placed at Annexure-1 as well as non-supply of names of such of the consumers who had complained against the petitioner as regarding the irregularities in distribution of the



food-grains or the kerosene oil has prejudiced the petitioner to file his purposeful reply and in absence thereof, the order impugned in my opinion, are based on no materials.

Though it was strenuously argued by Mr. Pandey that in absence of any response by the petitioner the allegations would be deemed to have been admitted but in my opinion even if the show cause reply was missing, the orders passed by the statutory authorities having civil consequences and resulting in cancellation should reflect application of mind. Unfortunately it is grossly missing inasmuch as neither the order of the Licensing Authority nor the order of the appellate authority deal with the materials which formed the basis to drive home the charges. The orders impugned are indefensible and cannot be upheld."

9. Having regard to above settled legal position, the writ petition is allowed. The impugned orders of both the Respondent No. 4, Sub Divisional Officer, Muzaffarpur (West) and the Appellate Authority are set aside and the authorities concerned are directed to restore the supplies to the petitioner for distribution to the consumers. In case the authorities want to take any action, they shall issue a fresh notice to the petitioner along with the copy of the inquiry report and any other material on which they rely upon. The petitioner shall be given an opportunity of submitting his



explanation and also an opportunity of hearing before passing any order.

10. With the above directions, the writ petition stands allowed to the extent indicated.

(A. Abhishek Reddy , J)

gauravkr/-

AFR/NAFR	NAFR
CAV DATE	N/A
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