

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8781 of 2023

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Shyama Devi W/o Late Ramvriksh Paswan, Resident of Village -
Mustafaganj, P.S - Meenapur, District - Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Food and Consumer Protection Department, Govt. of Bihar, Patna.
2. The Collector Muzaffarpur.
3. The Sub-Divisional Officer (East), Muzaffarpur.
4. The Block Supply Officer, Meenapur, District - Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prem Prakash Poddar
For the Respondent/s : Mr. Arvind Ujjwal (Sc4)

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

2 22-09-2023 Heard the parties.

2. This writ petition is filed for the following relief:-

“For issuance of appropriate writ(s), order(s), direction(s) for quashing the order contained in Memo No.- 2715 dated 29.08.2020 passed by the learned Sub-Divisional Officer -cum- Licensing authority by which the PDS License of the petitioner being License No.- 23-09-09-03/2016 has been cancelled and further for quashing the appellate order dated 10.01.2023 passed in Supply Appeal Case No.- 02/2022-2023 by the Learned Collector -cum- District Magistrate, Muzaffarpur



by which he has dismissed the authority appeal affirmed the order of the licensing authority and further be pleased to restore the license and supply of the petitioner.”

3. Counsel for the petitioner has stated that the impugned order of cancellation passed by the Sub-Divisional Officer on 29.08.2020 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 08.08.2020 and, thereafter, a show-cause notice was issued to the petitioner on 10.08.2020 for which the petitioner has given a suitable reply on 18.08.2020. Learned counsel states that another inspection seems to have taken place on 19.08.2020 making fresh allegations against the petitioner, however, no fresh show cause notice was served on the petitioner. Learned counsel states that though in the impugned order, it is stated that the petitioner was given a show-cause notice on 24.08.2020, no show cause notice was served on the petitioner that without giving the petitioner any opportunity of filing his explanation to the second show-cause notice, the impugned order was passed on 27.08.2020. Learned counsel has stated that 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. 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 24.08.2020 on the petitioner and giving him a 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 have 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 10.08.2020 and, thereafter, his explanation was submitted on 18.08.2020. However, the order dated 29.08.2020, which is impugned, reflects that in the present CWJC, second inspection has taken place on 19.08.2020 leveling fresh charges on the petitioner. Though the order reflects that a show-cause notice was issued on 24.08.2020 to the petitioner, there is no proof that a copy was served on the petitioner. Moreover, the impugned order is passed after giving only three days to the petitioner for filing his explanation to the show-cause notice dated 24.08.2020.

7. The passing of the order on 27.08.2020 by the Sub Divisional Officer without issuing the show-cause notice dated 24.08.2020 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. The matter is remanded back to the Sub Divisional Officers for passing the order afresh duly serving a copy of the show-cause notice dated



24.08.2020 on the petitioner along with any inquiry report. The petitioner shall be given an opportunity to submit his explanation to the show cause notice dated 24.08.2020. 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 of.

(A. Abhishek Reddy , J)

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