

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10042 of 2023

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Dinesh Kumar, Son of Late Ambika, Resident of Village-Kadwa Kartik Nagar
(SC Tola), Ward No. 07 Gram Panchayat Kadwa Diyara, Police Station-
Dholbajja, District-Bhagalpur

... .. Petitioner/s

Versus

1. The State of Bihar through Secreary, Food and Consumar Protection
Department Patna, Bihar.
2. The Divisional Commissioner, Bhagalpur.
3. The District Magistrate, Bhagalpur.
4. The Sub-Divisional Officer-Cum-Licensing Officer Naugachiya, Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Surya Narayan Yadav, Adv.
For the Respondent/s : Mr.S. Raza Ahmad (Aag5)

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

4 28-11-2023 Head learned counsel for the parties.

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

*“(i) For quashing / setting aside the order
dated 18.04.2023 passed by the Commissioner
Bhagalpur, Respondent no.-2 in Supply Revision
Case No. 23/2022-23 by which wrongly and
illegally confirmed the order dated 25.04.2022
of supply Appeal Case no.-331/2021-22 passed
by the District Magistrate, Bhagalpur on
(Respondent No.-3) and bearing vide memo No.
682/आ० dated 22.12.2021 passed by the Sub-
Divisional officer-cum- Licensing Officer.
Naugachiya, Bhagalpur. (Respondent No.-4) by*



which the license of PD.S bearing license No. 153/16 has been cancelled.

ii) For quashing/setting aside the order dated 22.12.2021 by which the Sub- Divisional officer-cum- Licensing Officer. Naugachiya, Bhagalpur. (Respondent No.-4) has been passed illegal order by cancelling the License of Petitioner”.

3. Learned counsel appearing on behalf of the petitioner has stated that the Sub-Divisional Officer while issuing the show cause notice to the petitioner has not enclosed the enquiry report.

4. Further learned counsel has relied on the judgment of this Hon'ble Court in CWJC No.253 of 2014 dated 11.03.2015 wherein this Hon'ble Court has held that the non-supply of the enquiry report along with the show-cause is bad and against the principle of natural justice and equity.

5. Learned counsel has stated in view of the above mentioned provisions of law and judgment relied by the petitioner, the impugned order may be set aside and matter remanded back to the authorities concerned for furnishing a copy of the enquiry report and any other material that they seek to rely on and give an opportunity of filing his explanation and thereafter take necessary action.

6. Per contra, the learned counsel appearing on behalf



of the respondents has vehemently opposed the very maintainability of the writ petition and stated that the present writ petition is not maintainable as the petitioner has an alternative and efficacious remedy of filing an appeal before the District Magistrate. Learned counsel has therefore prayed this Hon'ble Court to dismiss the present writ petition.

7. This Court in CWJC No.253 of 2014 dated 11.03.2015 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."

8. A perusal of the show-cause notice issued to the petitioner does not reveal that the copy of the enquiry report was enclosed along with the show-cause notice.

9. Having regard to the above facts and circumstances and the law laid down by this Hon'ble Court, the present CWJC is allowed. The impugned orders dated **18.04.2023**, **25.04.2022** and **22.12.2021** passed by the Divisional Commissioner, the District Magistrate and the Sub-Divisional Officer, respectively, are set aside. The matter is remanded back to the Sub-divisional Officer (Respondent No. 4) for furnishing a copy of the enquiry report and any other material relied on the petitioner and call for his explanation by giving reasonable time.



10. On such show-cause notice being served, the petitioner shall file his explanation within the stipulated time. On receipt of the explanation submitted by 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.

11. It is needless to mention that before passing any order, the petitioner shall be given an opportunity of hearing. 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 petitioner.

12. With the above directions, this Writ Petition is allowed to the extent indicated above.

(A. Abhishek Reddy , J)

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