

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12737 of 2023

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Dinesh Kumar Rai S/o Late Ram Janam Ray R/o- Village and Block-
Mohanpur, P.S.- Raghapur, District- Vaishali at Hajipur.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Food and Civil Supply,
Government of Bihar, Patna.
2. The Principal Secretary, Food and Civil Supply, Government of Bihar,
Patna.
3. The District Magistrate, Vaishali.
4. The Additional District Magistrate, Vaishali at Hajipur.
5. The District Supply Officer, Vaishali.
6. The Sub- Divisional Officer, Hajipur, District- Vaishali.
7. The Block Supply Officer, Raghapur, District- Vaishali.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Alok Ranjan, Adv
For the Respondent/s : Mr.Arvind Ujjwal (Sc 4)

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

2 19-10-2023 Heard learned counsel for the parties.

2. This writ petition has been filed for the following
reliefs:-

- “I. For quashing the order passed in PDS Appeal
no. **30/2022-23** dated 13.04.2023 issued and passed
by Additional District Magistrate, Vaishali,
whereby and where under the learned ADM
Vaishali has dismissed the appeal filed on behalf of
the petitioner only taking into the consideration the
order passed by the Sub-Divisional Officer Hajipur,
vaishali and affirming the order dated 17.01.2021.
- II). For quashing of the order passed by the Sub



divisional Officer Hajipur, passed in supply case no. 169 of 2020 dated 17.01.2021 as contained in memo no. 12 **dated 18.01.2021**, whereby and where under the Fair Price shop of the petitioner under Public Distribution system bearing License no. 30/2016, without considering the fact that the copy of inquiry report was never served to the petitioner and hence petitioner was precluded from submitting whole some reply and the PDS license of the petitioner was cancelled by a illegal, arbitrary, cryptic, unreasoned, unexplained order and the same is in violation of principals of Natural Justice and also in contravention of statutory provisions of the act and not sustainable in the eyes of law and the same is fit to be quashed.

III. Further for direction to the respondents to restore the license and supply to the Fair Price shop of the petitioner under Public Distribution system bearing License No. 30/16.”

3. Learned counsel for the petitioner has stated that the authority concerned has cancelled the license of the petitioner on grounds which have not been stated in the show cause notice. Learned counsel has stated that without issuing the copy of the enquiry report, the names of the complainants nor the statements made by the said complainants, the show cause notice was issued to the petitioner. That the issuance of



the show cause notice without furnishing the enquiry report on which the impugned order is passed is bad in law and the same is liable to be set aside. Further learned counsel appearing on behalf of the petitioner states that the shop of the petitioner was closed on the date of inspection. Therefore, allegations made by the authorities are without any legal basis. Learned counsel for the petitioner has relied on the Judgment of this Hon'ble Court reported in 2012(3) PLJR 583 wherein it was held that the licence cannot be cancelled on the ground that the shop was closed on a single day. Therefore, learned counsel for the petitioner states that the impugned order may be set aside and the matter remitted back to the authority concerned for passing orders afresh duly furnishing the copies of the enquiry report, the names of the complainants and also the statements, if any, made by them.

4. 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 petitioner has an alternative and efficacious remedy of filing an appeal before the District Magistrate concerned. That the petitioner without availing the remedy of appeal has straightaway moved this Hon'ble Court by way of writ petition



and the same is liable to be dismissed.

5. A perusal of the show cause notice reveals that the enquiry report on which reliance has been made by the authority concerned has not been furnished to the petitioner. Moreover, the names of the complainants nor the statements made by them, if any, have not been enclosed to the petitioner.

This Court in C.W.J.C. No. 253 of 2014, dated 11.03.2015, has held as under:

"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 foodgrains 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."

6. Having regard to the above facts and circumstances, the impugned order is set aside and the matter is remanded back to the authority concerned for passing orders afresh. The authority concerned before passing orders shall furnish the copies of the enquiry report, the names of the complainants and any statements made by them to the petitioner and give him an opportunity of filing an explanation within a reasonable time. After receipt of the explanation, the authority concerned shall pass a reasoned order duly taking into consideration the explanation submitted by the petitioner in accordance with law. The entire exercise shall be completed as expeditiously as possible preferably within a period of eight weeks from the date of receipt of the copy of this order. It is needless to mention that before passing any order, the petitioner shall be given an opportunity of hearing. Any order passed shall be communicated to the party.



7. With the above observations, the writ petition is
disposed of

(A. Abhishek Reddy , J)

Bhardwaj/-

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