

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5792 of 2015

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Vyash Pandey Son of Late ShivPujan Pandey Resident of village- Chorma
Panchayat Mahamda Block, Bhagwanpur Hatt, P.S. - Maharajganj, District-
Siwan ... Petitioner

Versus

1. The State Of Bihar
2. The Commissioner Saran Division, Chapra.
3. The Collector-cum-District Magistrate, Siwan,
4. The Sub- Divisional Officer, Maharajganj, Siwan.
5. The Block Supply Officer, Bhagwan Hatt, Siwan. ... Respondents

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Appearance :

For the Petitioner : Mr.Ravi Kumar Panday, Adv.
For the Respondents : Mr.Ajay Bihari Sinha, SC XIX

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

5 25-08-2023 Heard the learned counsel for the parties.

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

*(i) For quashing the order dated 13.03.2015
(Annexure -6) in Supply Revision Case No. 366 of
2013 passed by the Respondent No. 2 whereby and
whereunder he has uphold the cancellation of PDS
License (License No. BH79/2009) of the petitioner.*

*(ii) For quashing the order dated 21.11.2013
(Annexure 4) passed by the Respondent No. 3 in
Supply Appeal No. 134/20120-13 whereby and
whereunder he has upheld the order cancelling PDS
License of the petitioner.*

*(iii) For quashing the order dated 20.09.2012
(Annexure – 2) passed by the Respondent No. 4
whereby and whereunder he has sanctioned the PDS
License bearing License No. 79 of 2009 of the
petitioner.*

*(iv) For direction to the respondent concerned to
immediately restore the PDS License (License No.*



BH79/2009) of the petitioner.

3. Learned counsel for the petitioner has stated that the petitioner was granted license originally in the year 1985 and, thereafter, license was renewed under the provisions of Public Distribution System (Control) Order, 2007, vide License No. BH79 of 2009. Learned counsel has stated that the petitioner received show cause notice, dated 20.08.2012, wherein it was stated that the shop of the petitioner was inspected on 20.08.2012 and the Block Supply Officer (Respondent No. 5) has found some discrepancies. The Block Supply Officer has submitted his report to the Sub Divisional Officer, i.e., Respondent No. 4 and based on the report of the Block Supply Officer the show cause notice was issued to the petitioner, to which the petitioner has submitted his explanation on 28.08.2012. Thereafter, the Respondent No. 4, Sub Divisional Officer, sought the opinion of the Block Supply Officer on the explanation submitted by the petitioner. Thereafter, the Block Supply Officer submitted his opinion vide Memo No. 164, dated 19.09.2012. The Sub Divisional Officer based on the opinion submitted by the Block Supply Officer has cancelled the license of the petitioner vide Memo No. 384, dated 30.09.2012.

4. Aggrieved by the order of cancellation of license the petitioner preferred a statutory appeal before the Collector-cum-



District Magistrate, Respondent No. 3, vide Appeal No. 134 of 2012-13. The appellate authority without considering the grounds of appeal raised by the petitioner has dismissed the appeal on 21.11.2013. Thereafter, the petitioner filed a revision before the Commissioner, Saran at Chapra, i.e., Respondent No. 2, vide Supply Revision No. 366 of 2013 and the Revisional Authority has also dismissed the revision filed by the petitioner vide order, dated 13.03.2015 in a mechanical manner.

5. Learned counsel for the petitioner has stated that the entire basis for cancelling the license issued in favour of the petitioner was an alleged inspection that has being conducted on 20.08.2012 by the respondent No. 5. Learned counsel has stated that 20.08.2012 was a national public holiday being Eid-ul-Fiter, due to which the shop of the petitioner was closed, therefore, the alleged inspection conducted by the respondent No. 5 is only a cooked-up story, invented for the purpose of cancelling the license of the petitioner at the behest of the local Mukhiya.

6. Learned counsel has stated that the Mukhiya of the village is inimical to the petitioner and has been creating trouble. Counsel has stated that neither the copy of the enquiry report, the opinion of the Block Supply Officer, the names nor the statements of the beneficiaries been furnished to the petitioner along with the show cause notice. Even the reply submitted by



the petitioner to the show cause was also not considered properly by the Sub Divisional Officer, the reply given by the petitioner was rejected without assigning any reasons except using the word unsatisfactory. The order of the Sub Divisional Officer does not deal either with the allegations or the denials made by the petitioner. Further, learned counsel has stated that the show cause notice issued to the petitioner is a cyclostyled copy and there is no independent application of mind by the authority concerned before issuing the show cause notice. Learned counsel has stated that the impugned order is based on the opinion given by the Block Supply Officer, who in his opinion has clearly stated that the shop of the petitioner was closed on 20.08.2012, but, the same has not been considered. The Sub Divisional Officer passed the order in a mechanical manner without any independent approach or application of mind. The appellate authority has also dealt with the appeal in a cursory and mechanical manner, except stating that the order passed by the Sub Divisional Officer does not suffer any infirmity, no other reasons are given by the appellate authority. The order is bereft of reasons and does not take into consideration the fact that on the alleged date of inspection was a public holiday and the petitioner was not given the supplies of ration for the months of June and July. Even the order of Revisional Authority does not



deal with the merits of the case and is vague. Therefore, learned counsel for the petitioner has stated that once it is found that the order of the primary authority is not based on the record and that the principles of natural justice and equity have been violated, the subsequent orders passed by the appellate authority as well as the revisional authority cannot be sustained and, therefore, have to be set aside. Learned counsel has prayed this Hon'ble Court to allow the present Writ Petition and set aside the orders, impugned, in the present Writ Petition.

7. Per contra, the learned counsel appearing on behalf of the respondents has vehemently tried to uphold the validity of the orders passed by the authorities concerned. Learned counsel has relied on the counter affidavit filed by the respondents to substantiate that the orders were passed in consonance with the provisions of the act and that the present writ petition does not merit for any consideration and prayed this Court to dismissed the present Writ Petition.

8. A perusal of the documents filed by the petitioner, the orders passed by the Sub Divisional Officer, the Appellate Authority and the Revisional Authority reveal that the Respondent No. 4 has issued the show cause notice to the petitioner based on the enquiry report submitted by the Respondent No. 5. In the enquiry conducted by the Respondent



No. 5, he has stated that inspection was done on 20.08.2012 and also accepts the fact that 20.08.2012 is a public holiday, therefore, it is not understandable as to how the Block Supply Officer could have inspected the shop of the petitioner on 20.08.2012 when the same was closed. Once it emerges that the shop was closed on 20.08.2012, and no inspection could have taken place on that day, the rest of the allegations made against the petitioner have to fail. Moreover, the petitioner was not supplied with the copy of the enquiry report, neither the names of the beneficiaries were furnished to the petitioner nor the statements of the beneficiaries supplied to the petitioner. The counter affidavit filed by the respondents shows that except stating that the petitioner has committed some irregularities there is no other document to substantiate the allegations made against the petitioner. The fact that 20.08.2012 was a national public holiday due to Eid-ul-Fitr has not been denied in the counter affidavit. Further, it is stated that the petitioner has failed to prove his innocence and, therefore, the authorities have passed the impugned order. The cardinal principle of law is that the authorities making an allegation have to prove the act alleged and it is not for the accused to prove his innocence has been lost sight by the authorities.

9. A perusal of the order passed by the Sub Divisional



Officer shows that the order was passed solely based on the opinion of the Block Supply Officer, without there being any independent application of mind. The Sub Divisional Officer except stating that the explanation filed by the petitioner is not satisfactory has not given any other reason in the order. The orders of the Appellate Authority as well as the Revisional Authority are also bereft of any valid reasons. The Hon'ble Supreme Court as well as this Hon'ble Court in a catena of cases has held that when quasi judicial authorities pass any orders, they are bound to give valid and cogent reasons in the said order, so as to when reasons are given in the orders it will not only enable the aggrieved party to raise the grounds of appeal but also help the superior Courts or forums an idea as to what has passed through the minds of the said authority. In the absence of any reasons being given in the impugned orders, neither the superior authority nor the Courts can fathom the reasons for passing the said order. Even though an elaborate order is not expected from the quasi judicial authorities, they are still expected to pass a reasoned order giving cogent reasons for passing the said orders.

10. This Court in the judgment reported in **2013(3) PLJR, 249 (Krishna Kumar Srivastava Vrs. the State of Bihar & Ors.)** has held as under :

“This Court has repeatedly made it clear that if a



show cause notice is issued to a PDS dealer by the licensing authority on the basis of statement of consumers/beneficiaries attached to the shop in respect of non-supply or inadequate supply of food grains or charging higher amount than prescribed, names of such consumers/beneficiaries should be furnished to the dealer and, if any statement has been made on the basis of which any enquiry report has been submitted, copies of such statement and the report should also accompany the show cause. This basic requirement of fair play in action is only for compliance of Principles of Natural Justice. If the show cause notice is vague and does not contain particulars in support of the allegations and is not accompanied with the relevant materials which may be considered by the licensing authority at the time of passing final orders, the same has to be termed as giving inadequate opportunity to the PDS licence holder.”

11. In C.W.J.C. No. 19546 of 2019 (Arun Chaudhary

Vrs. the State of Bihar & Ors.) it has been held as follows :

“..... the learned counsel for the petitioner has shown to this court that though the original order of cancellation of license runs in around three pages but the licensing authority has only recounted the grounds raised by the petitioner and has disposed of those grounds in one line that those are unsatisfactory.

What is the reason for the Licensing Authority to hold such grounds to be unsatisfactory has not been stated.

We do not get any idea from such order as to whether the petitioner was entitled to be retained as a licensee or that the order of cancellation of license was correct on the prevalent set of facts.

Since the defect in the original order cannot be restituted in an appeal for the reasons that the petitioner would not know in his capacity as appellant, what to challenge and on what grounds, the provision of appeal becomes rather otiose.”



12. In LPA No. 499 of 2018 this Court held as follows :

“.....we find that under sub-clause (ii) of Order 27 of the Control Order, 2016, it is clearly stipulated that no order of cancellation of a licence shall be made until the licensee has been given sufficient opportunity to state his case against the proposal of cancellation. The words, ‘proposal for cancellation’ appearing in the statutory provision clearly contemplates that when the show cause notice is issued, licensee should be categorically informed that there is ‘proposal for cancellation of licence’ and show cause notice issued as to why licence should not be cancelled. In the show cause notice issued to the petitioner, apart from the fact that there is no such proposal indicated asking him to show cause as to why licence should not be cancelled, we find that on the second ground also, the impugned action is not sustainable inasmuch as the petitioner gave a detailed explanation and justification against the proposed action, as is contained in Annexure-6, and in a cryptic manner, without considering the explanation and defence of the petitioner, his licence has been cancelled. This amounts to violation of principles of natural justice inasmuch as the non-application of mind and passing an order adverse to or prejudice to a person without considering his defence is also a facet and the requirement of principles of natural justice and this having not been followed.....”

13. Under the above facts and circumstances, and the law laid down by this Hon’ble Court in the above cited judgments the order, dated 19.09.2012, passed by the Block Supply Officer, respondent No. 5, the order, dated 30.09.2012, vide Memo No. 384, passed by the Sub Divisional Officer, (the Respondent No. 4), the order, dated 21.11.2013, passed by the Appellate Authority (the Respondent No. 3) vide Appeal No. 134



of 2012-13, and the order, dated 13.03.2015, passed by the Revisional Authority vide Supply Revision No. 366 of 2013 are all set aside.

14. The authorities are directed to restore the license of the petitioner within a period of two weeks from the date of receipt of a copy of this order.

15. Writ application is, accordingly, **allowed** to the extent indicated above.

(A. Abhishek Reddy , J)

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