

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10951 of 2023

Md. Galib Son of Late Fazallu Rahman Resident of Village-Marhuka, Village Panchayat-Tineri, Police Station-Anti, District-Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection Department, Govt. of Bihar at Patna.
2. The Divisional Commissioner, Magadh Division, Gaya.
3. The District Magistrate, Gaya.
4. The Sub Divisional Officer, Tikari, District-Gaya
5. The Block Supply Officer, Konch, Dist.-Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Binay Kumar, Adv.

For the Respondent/s : Mr. Arvind Ujjwal (Sc 4)

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

2 10-10-2023

Head learned counsel for the parties.

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

“1. That this is an application for issuance of appropriate writ/writs, order/orders and direction/directions to quash the order dated 21-06-2016 contained in memo No.391 passed by the Licensing Authority cum Sub Divisional Officer, Tikari whereby the license No.- 01/87 of the petitioner granted under Public Distribution System Control Order, 2001 and now under the Bihar Targeted P.D.S. (Control) Order, 2016 has been cancelled in very capricious manner and quash the consequential order dated 12-01-2023 passed by the Divisional Commissioner, Magadh



Division, Gaya in Supply Revision case No. 247/2021 whereby while dismissing the Revision he has affirmed the cryptic and unreasoned order of cancellation and/or pass any other writ/order/direction which your Lordships may deem fit and proper.”

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 and there is no proposal for cancellation of the license in the show-cause notice.

4. Learned counsel has stated that non-mentioning of the proposal for cancelling his license is contrary to the provisions of order 27(ii) of the Bihar Targeted Public Distribution System (Control) Order, 2016 (hereinafter referred to as ‘the Order, 2016’)

5. 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.

6. Learned counsel has further stated that petitioner has taken the above ground in the appeal, but the appellate authority has not dealt with the above ground and dismissed the appeal in a mechanical manner.



7. Learned counsel for the petitioner has also relied on the judgment of the Full Court passed in CWJC No.21202 of 2021 and analogous cases dated 26.09.2023 to buttress his contention that non-mentioning of the proposed action in the show-cause notice is bad in law and contrary to Rule 27(ii) of the Control Order, 2016.

8. Learned counsel has stated in view of the above mentioned provisions of law and judgments relied by the petitioner, the impugned order may be set aside and matter remanded back to the authorities concerned for issuing a fresh show-cause notice in terms of order 27(ii) of the Control Order, 2016 and also furnish a copy of the enquiry report along with the said show-cause notice and thereafter take necessary action.

9. *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 a revision before the Commissioner. Learned counsel has therefore prayed this Hon'ble Court to dismiss the present writ petition.

10. 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."

11. Further this Hon'ble Court in CWJC No.21202 of 2021 and analogous cases has held as under:

"19. Accordingly, we answer the reference as under:-

It is mandatory for a licensing authority issuing a notice under order 27(ii) to a license to mention that there is a proposal for cancellation of his license, failing which such notice cannot be treated to be a valid notice of giving sufficient opportunity to the licensee to state his case under order 27(ii) of the BTPDS Control Order. "

12. 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 and that there is no proposal of the action sought to be taken against the petitioner.

13. 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 order dated 12.01.2023 passed by the Appellate Authority and the order dated 21.06.2016 passed by the Sub-Divisional Officer are set aside. The matter is remanded back to the Sub-Divisional Officer (Respondent No. 4) for issuing a fresh show-cause notice to the petitioner strictly in compliance with the provisions



of Rule 27(ii) of the Control Order, 2016 and also furnish a copy of the enquiry report along with the Show Cause Notice to the petitioner and call for his explanation by giving reasonable time.

14. 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 orders strictly in accordance with law duly taking into consideration the explanation submitted by the petitioner.

15. It is needless to mention that before passing any orders, 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.

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

(A. Abhishek Reddy, J)

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