

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11486 of 2023

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Rinku Kumari Wife of Ramakant Singh, Resident of Village Pura, P.S. Hathouri (Shivaji Nagar O.P.), District - Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Food and Consumer Protection Department, Old Secretariat, Patna.
2. The District Magistrate, Samastipur.
3. The Sub-Divisional Officer, Rosara, District - Samastipur .

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajeev Kumar Labh, Adv.
For the Respondent/s : Mr. S. Raza Ahmad (Aag5)

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

2 12-10-2023 This writ petition has been filed for the following
reliefs:-

*A. A Certiorari for quashing
and setting aside the order passed by the
Sub-Divisional Officer, Rosara and
issued vide Memo No. 718 dated
10/7/2023 whereby and where under
license of the petitioner's P.D.S. Shop
bearing license No. 88/2019 has been
cancelled contain in Annexure-1.*

*B. A mandamus commanding
the Respondents to restore the
petitioner's license and to make allotment
for the same as before.*

2. 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. Therefore, learned counsel for the petitioner states that the impugned order may be set aside and the matter is 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.

3. *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.



4. 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 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."

4. 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.



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

(A. Abhishek Reddy , J)

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