

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13382 of 2022

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Jitendra Bahadur Nirala S/o Late Amirchan Ram R/o Village- Tenua, Sadar,
Chapra, Saran, District- Bihar- 841435 ... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection, Government of Bihar, Patna.
 2. Sub-Divisional Officer, Sadar, Chapra (Supply Branch), Saran District- Bihar.
 3. Collector, Saran, Chapra, Saran District, Bihar
 4. Divisional Commissioner, Saran Division, Chapra, Saran District, Bihar.
- ... Respondents

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Appearance :

For the Petitioner : Mr.Majid Mahboob Khan, Adv.
For the Respondents : Mr.S. Raza Ahmad (Aag5)

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

4 04-12-2023 Heard the learned counsel for the parties.

2. The present writ petition has been filed for the
following reliefs :

i. Issuance of a direction, order or writ, including writ in the nature of certiorari/mandamus of any other appropriate writ order or direction quashing and setting aside the order passed by the Sub-Divisional Officer, Sadar, Chapra (Supply Branch) dated 18.09.2018 having Notification No. 1730 cancelling the license of the of the Petitioner;

ii. Issuance of a direction, order or writ, including writ in the nature of certiorari/mandamus of any other appropriate writ order or direction quashing and setting aside the order dated 5.11.2019 passed by the Ld. Collector, Saran, Chapra bearing Supply Appeal No. 36/2018; 3

iii. Issuance of a direction, order or writ, including writ in the nature of certiorari/mandamus of any other appropriate writ order or direction quashing and setting aside the order 16/04/2021 dated



17/07/2021 passed by the Divisional Commissioner, Saran Division, Chapra having Revision (Supply) in Case No. 38/2020;

iv. Issuance of a direction, order or writ, including writ in the nature of certiorari/mandamus of any other appropriate writ order or direction commanding the Respondents to take immediate steps restoring the license of the petitioner herein;

v. Any other relief/reliefs that the petitioners may be found to be entitled to in the facts and circumstances of the present case.

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 order dated, dated 18.09.2018 vide Notification No. 1730, passed by the Sub-Divisional Officer is set aside. The matter is remanded back to the Sub-divisional Officer (Respondent No. 2) 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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