

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15323 of 2022

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Shyam Sundar Prasad Rastogi @ Shyam Sundar Prasad Son of Late Sarwadev Prasad Rastogi, Resident of Babu Tola, Shankar Saraiya, P.S. - Turkauliya, District- East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Civil Supply Department, Government of Bihar, Patna.
2. The Divisional Commissioner, Tirhut Division, Muzaffarpur.
3. The District Magistrate, East Champaran (Motihari).
4. The Sub-Divisional Magistrate, Saran, East Champaran, (Motihari).
5. The Block Supply Officer, Turkauliya, District - East Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. N.K. Agarwal, Sr. Adv. Mr. Sanjay Kumar, Adv. Ms. Diksha Kumari, Adv.
For the Respondent/s	:	Mr. S. Raza Ahmad (Aag5)

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

3 05-12-2023 Head learned counsel for the parties.

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

“I. For issuance of any appropriate writ or writs, Rule of direction especially in the nature of certiorari, quashing the Memo No. 25 dated 30.01.2017 passed under the signature of the Sub Divisional Officer, Sadar, Motihari (Respondent No. 3) whereby and where under License No.- 02120028/2007 (Public Distribution System) has been cancelled with immediate effect without considering the factum and genesis of the alleged enquiry which was made on paper and based only



on the basis of oral Complain made by unknown.

II. For issuance of appropriate writ or writs rule or direction especially in the nature of certiorari, quashing the order dated 29.11.2019, passed in Supply Case No.- 55/2017, issued under the signature of Collector, East Champaran (Motihari) whereby and where under an Appeal preferred against the Memo No.-25 dated 30.01.2017, passed by the learned Sub-Divisional Officer, Sadar, Motihari has been dismissed without appreciating the settled principles of law as laid down in Bihar Public Distribution (Control) Order-2016 as well as factum and genesis of the case.

III. For issuance of appropriate writ or writs Rule or direction especially in the nature of certiorari, quashing the order dated 25.04.2022, passed in (Public Distribution System) P.D.S. Appeal Case No.- 88/2021 has been dismissed without appreciating the Show-cause of the petitioner.

IV. For issuance of appropriate writ or writs Rule or direction especially in the nature of mandamus, directing the respondents to restore the (Public Distribution System) P.D.S. License No.- 021200028/2007 and petitioner may be direct to run his Public Distribution System Shop smoothly under the Gram Panchayat, Shankar Saraiya, Block-Turkauliya, District- East Champaran At the request of learned counsel for the petitioner, post this matter on Motihari.”

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. Further, the learned counsel for the petitioner has also stated that the names of the complainants or the statements made by the said complainants has not been furnished to the petitioner.

7. 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.

8. 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."

9. 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.

10. 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 30.01.2017 passed by the Sub-Divisional Officer is set aside. The matter is remanded back to the Sub-divisional Officer 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.

11. 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.

12. 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.

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

(A. Abhishek Reddy , J)

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