

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20710 of 2018

Mathura Prasad S/o Late Hari Lal yadav Resident of Village-Masaurhi
Gangachak, Malikana, P.S. Masaurhi, Distt.-Patna ... Petitioner
Versus

1. The State Of Bihar
2. The SDO, Masaurhi

... .. Respondent/s

Appearance :

For the Petitioner : Mr. Vijay Anand, Adv.
For the Respondents : Mr. Arvind Ujjwal, SC IV

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

16 14-09-2023 Heard learned counsel for the parties.

2. The present Writ Petition is filed for the following
relief(s) :

*“.....for challenging the order dated 25.09.2018
passed by SDO Masaurhi fully contained in Memo
No. 577 whereby and whereunder the PDS license
being License no. 102/2017 was cancelled as the
petitioner has failed to do his duties as incorporated
in clause 14 of the Bihar Targeted PDS Control
Order 2016.”*

3. Learned counsel appearing on behalf of the
petitioner has stated that the petitioner was allotted PDS license
vide License No. 102/2017. That the Subdivisional Officer,
Masaurhi, (Respondent No. 2) made an inspection on
23.07.2018 and found that there were some discrepancies in the
stock of the petitioner. The Subdivisional Officer found that the
quantity of stock found in the shop did not tally with the stock



shown in the stock register and, thereafter, a show cause notice was issued on 26.07.2018 vide Memo No. 464 directing the petitioner to submit his explanation within a period of five days and, thereafter, the petitioner has submitted his explanation. However, the Respondent No. 2 while passing the cancellation order did not advert to the explanation submitted by the petitioner nor the allegations made against the petitioner, but, has passed the order of cancellation on totally new grounds not stated in the show cause notice. In the cancellation order the 2nd Respondent has relied on the statement of four consumers whose names were not disclosed to the petitioner along with the show cause notice nor their statements submitted. The 2nd Respondent has passed the order of cancellation on the ground that the petitioner has given less quantity of grains to the consumers and chargeing more amounts from the consumers. Learned counsel has stated that the reasons given in the order are not found in the show cause notice issued to the petitioner. Learned counsel has stated that the passing of the order by the authority on a totally new grounds, without putting the petitioner on notice is against the principles of natural justice and equity. Counsel has relied on the judgment passed by this Hon'ble Court in C.W.J.C. No. 4446 of 2019, dated 15.07.2019.



4. Per contra, the learned counsel for the respondents has stated that the petitioner has an alternative and effective remedy of filing an appeal against the order of Subdivisional Officer and stated that the petitioner may be directed to file an appeal before the District Magistrate concerned taking all necessary grounds and prayed for dismissal of the present Writ Petition.

5. A perusal of the impugned order shows that the 2nd Respondent has passed the order cancelling the PDS License of the petitioner on totally new grounds, i.e., that the petitioner was not giving the correct quantity of grains to the consumers and that he over charges the consumers. These grounds are not found in the show cause notice issued to the petitioner. This Court in C.W.J.C. No. 4446 of 2019 has held as under :

“.....when fresh allegations had come against the petitioner a fresh opportunity to show cause may be granted.”

6. Having regard to the above mentioned submissions and the judgment of the coordinate Bench referred above, this Court is of the opinion that the impugned order has to be set aside as being violative of principles of natural justice and equity and the same is set aside. The matter is remanded back to the Respondent No. 2 for passing order afresh. The



Respondent No. 2 shall issue a fresh show cause notice to the petitioner on the allegations made against the petitioner. If any material is sought to be relied by the authority concerned, the petitioner shall be given a copy of the same along with the show cause notice and an explanation called for.

7. It is needless to mention that before passing any orders, the petitioner shall be put on notice and 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.

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

(A. Abhishek Reddy , J)

Shamshad/-

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