

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15460 of 2022

Ashok Bind son of Shiv Nandan Bind resident of village- Shivnandanpur,
Police Station- Sultanganj, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. Principal Secretary, Food and Supply Department, Government of Bihar, Patna.
3. The District Magistrate, Bhagalpur.
4. The Sub-Divisional Officer, Sadar, Bhagalpur.
5. The District Supply Officer, Bhagalpur.
6. The Block Supply Officer, Sultanganj, Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. N.K. Agarwal, Sr. Adv. Mr. Nazmul Hooda, Adv. Ms. Diksha Kumari, Adv.
For the Respondent/s	:	Mr. S. Raza Ahmad (Aag 5)

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

3 05-12-2023 Heard the learned counsels for the parties.

2. This writ petition has been filed for seeking the following relief(s)

“I. For issuance of appropriate a writ of certiorari or any other appropriate writ, order or direction for quashing the order dated 16.11.2019 as contained in Memo No. 965 dated 20.11.2019 passed by the Licensing Authority cum Sub-Divisional Officer, "Sadar, Bhagalpur by which he has most arbitrarily and quite erroneously cancelled the petitioner's fair price shop bearing License No. 55/2016 without considering the show cause of the petitioner as well as without providing complete enquiry report.
II. For issuance of a writ of certiorari or any



other appropriate writ order or direction for quashing the order dated 12.05.2022 in Supply Appeal Case No. 130 of 2020-21 passed by the Respondent no. 3 the District magistrate Bhagalpur dismissing the appeal by confirming the order dated 20.11.2019 issued by the S.D.O., Sadar, Bhagalpur by which he has cancelled the licence of Fair Price Shop of the petitioner.

III. For issuance of appropriate writ(s), order(s) or direction(s) to the respondent Licensing Authority cum Sub-divisional Officer to restore the petitioner's license bearing no. 55/2016 for running his fair price shop.

IV. For issuance of appropriate writ(s), order(s) or direction(s) to the respondent Licensing Authority cum Sub-Divisional Officer for releasing allotment of items under the Public Distribution System Scheme to the petitioner as it was being done before the cancellation of the petitioner's license in question.”

3. Learned counsel appearing on behalf of the petitioner has stated that in the Show Cause Notice issued by the Sub-Divisional Officer there is no proposal for cancellation of the license. 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’).

4. Learned counsel for the petitioner has relied on the judgment of the full Bench 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.

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 issuing a fresh show-cause notice in terms of order 27(ii) of the Control Order, 2016 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 exhausted all the remedies and all the authorities have found that the petitioner has violated the provisions of the Control Order, 2017. Learned counsel has therefore prayed this Hon'ble Court to dismiss the present writ petition.

7. 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 licensee 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. ”

8. A perusal of the show-cause notice issued to the petitioner does not reveal that there is any proposal of the action sought to be taken against the petitioner. Therefore, the same has to be held as bad, illegal, contrary to the provisions of Rule 27(ii) of the Control Order and has to be necessarily set aside.

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 passed by the Appellate Authority in Supply appeal Case No. 130 of 2020-21 dated 12.05.2022 as well as the order passed by the Sub-Divisional Officer, Sadar, Bhagalpur dated 16.11.2019 are set aside. The matter is remanded back to the Sub-divisional Officer 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 call for his explanation by giving him 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 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.

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

(A. Abhishek Reddy , J)

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