

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15364 of 2023

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Md. Kalim @ Md. Kalim Ansari Son of Md. Hatim Ansari Resident of
Village-Bhelwa, P.S.-Katoria, District-Banka.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection Department, Old Secretariat, Patna.
2. The Collector, Banka, District-Banka.
3. The Licensing Authority-Cum-Sub-Divisional Officer, Banka.
4. The Divisional Commissioner, Bhagalpur Division, Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rajeev Kumar Labh
For the Respondent/s : Mr.Arvind Ujjwal (Sc 4)

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

2 22-12-2023 Heard the learned counsels for the parties.

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

“A. For quashing and setting aside the order passed by the Licensing Authority-cum-Sub-Divisional Officer, Banka vide Memo No. 454 dated 18/6/2011 whereby and whereunder license No. 02/92 of the petitioner’s Fair Price Shop has been cancelled with immediate effect contained in Annexure-1 and quashing and setting aside the order dated 30/05/2023 passed by the learned Collector, Banka in Supply Appeal Case No. 69/13-14 whereby and where under appeal filed by the petitioner against the cancellation order has been rejected contained in Annexure-5

B. A mandamus commanding the Respondents to restore the petitioner’s license as before and to make allotment for the petitioner’s shop.



C. Any other relief or reliefs for which petitioner may be found entitled in the fact and circumstances of the present case may be granted to him.”

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, 20017. 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 license 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 held as bad, illegal, contrary to the provisions of Rule 27(ii) of the Control Order and has to 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 dated 30.05.2023, as well as the order passed by the Sub-Divisional Officer, Banka dated 18.06.2011 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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