

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16007 of 2022

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Md. Maksud Alam @ Maksood Alam Son of Md. Tahir Hussain, R/o Village-Dharampur, Narayan Urf Tehai, Panchayat-Muksudpur, P.S. Meenapur, District-Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary, Food and Consumer Protection Deptt., Govt. of Bihar, Patna.
2. The District Magistrate cum Collector, Muzaffarpur.
3. The District Supply Officer, Muzaffarpur.
4. The Sub-Divisional Officer, East, Muzaffarpur.
5. The Block Supply Officer, Meenapur, District-Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. N.K. Agarwal, Sr. Adv. Mr. Nafisuzzoha, 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 Heard the learned counsels for the parties.

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

I. For issuance of a writ in the nature of Certiorari, or any other appropriate writ/writs, order/orders or direction for quashing/setting aside the order dated 26.08.2022 passed in Supply Appeal Case No. 23/2021-22 (Contd. In Anx-5) by respondent no.2, the district Magistrate cum Collector, Muzaffarpur, whereby and where under the Respondent No. 2 pleaded to not interfere in the order



dated 29.05.2021 passed by Sub-Divisional Officer, East Muzaffarpur in Memo No. 1348/A (Contd. In Anx-3) by which order the s.D.O. East Muzaffarpur, cancelled the PDS license No. 23-09-11-03/2016 (contd. In Anx-1) of the petitioner.

II. For issuance of a writ of Mandamus or any other appropriate writ/writs, order/orders or direction for commanding and directing the respondent authorities to restore the P.D.S. License vide License No. 23-09-11-03/2016 which has been cancelled by the S.D.O, East Muzaffarpur on 29.05.2021 without considering the fact and circumstances of the case.

3. Learned counsel for the petitioner has stated that the authority concerned while issuing the show cause notice to the petitioner has only granted three days time for filing the explanation to the said show cause notice. Learned counsel has stated that the principles of natural justice and equity mandate that reasonable time should be granted to the petitioner for filing his explanation to the said show cause notice.

4. Learned counsel has relied on the judgment of this Hon'ble Court passed in C.W.J.C. No. 5508 of 2020 dated 23.11.2021 and C.W.J.C. No. 10315 of 2020 dated 17.11.2021



to buttress his contentions.

5. Learned counsel has further stated that even though the petitioner has filed an appeal, the appellate authority without considering the same has passed an order in a mechanical manner without adverting to the grounds raised by the petitioner or the issues raised. Learned counsel has, therefore, prayed this Hon'ble Court to set aside the impugned order and remand the matter back to the authority concerned and permit the petitioner to file his explanation before the said authority. That the authority may be directed to pass orders on merits duly taking into consideration the explanation submitted by the petitioner.

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 petitioner has an alternative and efficacious remedy of filing a revision before the concerned authority. Learned counsel has therefore prayed this Hon'ble Court to dismiss the present writ petition.

7. A perusal of the show-cause notice issued to the petitioner reveals that the petitioner was granted only three days time for filing his reply.



8. Admittedly, the petitioner has not filed any reply to the said show cause notice. This Court in C.W.J.C. 5508 of 2020 dated 23.11.2021 under the similar circumstances has held as under:-

"We are in agreement with the submissions made by Shri N.K. Agarwal, learned senior counsel appearing for the petitioner that three days period to respond to the show cause in terms of notice dated 12.09.2016, Annexure-3 Page 19, was insufficient for the petitioner to respond thereto, enable, for placing on record material in support of her case. We notice that the appellate authority has not dealt with this aspect in its order while dismissing the petitioner's appeal in terms of order dated 11.08.2018 passed in Case No. 224(M) 2016."

9. This Court in C.W.J.C. 10315 of 2020 dated 17.11.2021 has held as under:-

5. In response to the said submission made on behalf of the State of Bihar, it has been argued on behalf of the petitioner that as the impugned order is patently illegal in clear violation of principles of natural justice and in breach of mandatory requirement under clause 27 (ii) of BTPDS Control Order, existence of alternative remedy may not bar exercise of writ jurisdiction by this



Court.

6. Sub-clause (ii) of Clause 27 of BTPDS Control Order mandates that no order of cancellation of a licence shall be made until the licensee has been given sufficient opportunity to state his case against the proposal of cancellation of his licence.

7. In our considered view, Mr. Agrawal is correct in his submission that three days' time, allowed to the petitioner to state his case against proposed cancellation of licence, cannot be said to be sufficient opportunity within the meaning of Sub-clause (ii) of Clause 27 of BTPDS Control Order.

10. Having regard to the above made submissions and also the law laid down by this Hon'ble Court, the impugned order is set aside and the matter remanded back to the Sub Divisional Officer for passing order afresh. The petitioner shall file his explanation by 19.12.2023. On receipt of the explanation to the show cause notice, the Sub Divisional Officer shall pass a reasoned order strictly in accordance with law duly taking into consideration the explanation submitted by the petitioner as expeditiously as possible preferably within a period of six weeks thereof.

11. With the above directions, the present writ



petition stands disposed of.

(A. Abhishek Reddy , J)

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