

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.266 of 2023

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Md. Akbar Ansari S/o Late Hamid Ansari R/o-Village and P.S.-Masharak
(East), District-Saran at Chapra ... Petitioner

Versus

1. The State of Bihar through Principal Secretary Food and Civil Supply Government of Bihar, Patna.
2. The Principal Secretary Food and Civil Supply, Bihar, Patna.
3. The District Magistrate, Saran at Chapra.
4. The Sub-Divisional Officer, Madhaurah, Saran.
5. The Assistant Supply Officer, Madhaurah, Saran.
6. The Block Supply Officer, Masharak. ... Respondents

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Appearance :

For the Petitioner : Mr.Kumar Binode Bariar, Adv.
For the Respondents : Mr.S. Raza Ahmad, AAG V

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

3 19-08-2023 Heard the learned counsel for the parties.

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

I. For quashing the order dated 09.09.2022 issued and passed by the Divisional Commissioner, Saran at Chapra in Supply Revision No. 34 of 2022 and quashing the order dated 19.11.2018 issued and passed by the District Magistrate, Saran at Chapra in Supply Appeal No. 15 of 2010, by which the order passed by the Sub Divisional Officer, Madhurah, Saran, as contained in memo no. 1084 dated 16.03.2010 has been affirmed by which license of P.D.S. bearing License no. 03/2007 has been cancelled without applying any independent judicial mind only on the basis of recommendation made by the Block Supply Officer, Masharak.

II. Further for direction to the respondents to restore the license as well as supply for the Fair Price shop of the petitioner under Public Distribution System bearing License no. 03/2007.



III. For any other appropriate relief/reliefs to which the petitioner is found entitled in the facts and circumstances of this case.

3. Learned counsel for the petitioner has stated that the petitioner has been granted public distribution system license after the death of his father (original license holder) on compassionate ground. That the petitioner was issued the license under the provisions of the Public Distribution System (Control) Order, 2007, made by the Government of Bihar and the petitioner was issued license bearing No. 03 of 2007. That right from the inception the petitioner has been running the shop without any complaint from any quarter. Learned counsel has further stated that the authority has inspected his shop on 27.01.2010 and, thereafter, based on the enquiry report the show cause notice was issued to the petitioner by the respondent No. 4 vide letter No. 452, dated 06.02.2010.

4. Learned counsel has further stated that the petitioner has not been furnished with the copy of the enquiry report nor any material relied by the authorities while passing the order. Counsel for the petitioner has stated that the Sub Divisional Officer has passed the order of cancellation without advertng to the explanation submitted by the petitioner and



without furnishing any documents.

5. The only reason given in the cancellation order passed by the Sub Divisional Officer was that the explanation submitted by the petitioner was not satisfactory. Counsel has stated that the petitioner was not given the copy of the enquiry report nor the names of the consumers who have made the complaint furnished nor the statements of the consumers recorded were given. Even though the petitioner has preferred a statutory appeal and the same was also dismissed in a mechanical manner without advertng to the grounds raised by the petitioner in the appeal.

6. Per contra, the learned counsel appearing on behalf of the respondents has stated that the petitioner was duly put on notice and given an opportunity of submitting his explanation and, thereafter, the order of cancellation was passed by the Sub Divisional Officer. That the principles of natural justice and equity have being followed and the procedure as contemplated under the law was adhered to. That there are no procedural lapses committed by the authorities which warrants any interference by this Hon'ble Court. Learned counsel has also stated that the appellate authority has passed a reasoned order and prayed this Hon'ble Court to dismiss the present writ petition.



7. A perusal of the order passed by the Sub Divisional Officer, i.e., Respondent No. 4, shows that the shop of the petitioner was inspected on 27.01.2010 and, thereafter, on the basis of the report of the Block Supply Officer, the Respondent No. 4 has issued show cause to the petitioner.

8. Admittedly, as seen from the show cause notice, the petitioner was not given the copy of the enquiry report, nor the names of the complainants furnished nor the statements of the consumers, if any, were supplied to the petitioner.

9. This Court in the judgment reported in **2013(3) PLJR, 249 (Krishna Kumar Srivastava Vrs. the State of Bihar & Ors.)** has held as under :

“This Court has repeatedly made it clear that if a show cause notice is issued to a PDS dealer by the licensing authority on the basis of statement of consumers/beneficiaries attached to the shop in respect of non-supply or inadequate supply of food grains or charging higher amount than prescribed, names of such consumers/beneficiaries should be furnished to the dealer and, if any statement has been made on the basis of which any enquiry report has been submitted, copies of such statement and the report should also accompany the show cause. This basic requirement of fair play in action is only for compliance of Principles of Natural Justice. If the show cause notice is vague and does not contain particulars in support of the allegations and is not accompanied with the relevant materials which may be considered by the licensing authority at the time of passing final orders, the same has to be termed as giving inadequate



opportunity to the PDS licence holder.”

10. In **C.W.J.C. No. 19546 of 2019 (Arun Chaudhary Vrs. the State of Bihar & Ors.)** it has been held as follows :

“..... the learned counsel for the petitioner has shown to this court that though the original order of cancellation of license runs in around three pages but the licensing authority has only recounted the grounds raised by the petitioner and has disposed of those grounds in one line that those are unsatisfactory.

What is the reason for the Licensing Authority to hold such grounds to be unsatisfactory has not been stated.

We do not get any idea from such order as to whether the petitioner was entitled to be retained as a licensee or that the order of cancellation of license was correct on the prevalent set of facts.

Since the defect in the original order cannot be restituted in an appeal for the reasons that the petitioner would not know in his capacity as appellant, what to challenge and on what grounds, the provision of appeal becomes rather otiose.”

11. Having regard to the law laid down by this Hon'ble Court in the above mentioned cases, this Court is constrained to set aside the orders passed by the appellate authority, dated 19.11.2018, as well as the Sub Divisional Officer, dated 16.03.2010, and remand the matter back to the



Sub Divisional Officer, Respondent No. 4, for passing order afresh. The petitioner shall be put on notice and supplied with the copy of the enquiry report, the names of the complainants and the statements of the consumers, if any, recorded by the authorities. The petitioner shall be given an opportunity of filing his explanation and hearing before passing any orders.

12. The entire exercise shall be completed as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order. Any order passed shall be communicated to the petitioner.

13. This writ petition is allowed to the extent indicated above.

(A. Abhishek Reddy , J)

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