

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1774 of 2023

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Parmanand Pandey Son of Jagdeesh Pandey, R/o Phulwaria Baijani, Khutaha,
P.S.- Jagdishpur, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Civil Supply,
State of Bihar.
2. The Commissioner, Bhagalpur Divisional, Bhagalpur.
3. The District Magistrate-cum-Collector, Bhagalpur.
4. The Sub Divisional Magistrate, Bhagalpur.
5. The Block Supply Officer (Supply), District- Bhagalpur.
6. The District Supply Officer, District- Bhagalpur.
7. The District Manager, State Food Corporation, Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ritesh Kumar, Adv.
For the Respondent/s : Mr. Arvind Ujjwal (Sc 4)

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

10 10-10-2023 Head learned counsel for the parties.

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

*“(i) For holding the impugned order passed by the
Learned Divisional Commissioner, Bhagalpur
Division, Learned Collector Bhagalpur and
Learned Sub Divisional Magistrate, Sadar,
Bhagalpur as contained in Annexures 5
respectively are bad in law, having been passed
without there being any evidence, non
consideration of the materials and in violation of
the Principle of the natural Justice.*

(ii) For setting aside the order dated 18.09.2019



passed by the Learned Sub Divisional Magistrate, Sadar, bhagalpur, in Case No.1/2019-20 whereby, on wrong assumptions of facts and laws and without there being any material cancelled the Public Distribution Supply (P.D.S.) license bearing No.52/2016 of the Petitioner.

(iii) For setting aside the order dated 03.03.2022 passed by the Learned District Magistrate, Bhagalpur in Supply Appeal Case No.208/2019-20 whereby and where under on wrong assumptions of facts and law and also without addressing the legal issue raised by the Petitioner; the Appeal of the Petitioner was dismissed and the order of the Sub Divisional Magistrate dated- 18.09.2019 was upheld.

(iv) For setting aside the order of the Learned Divisional Commissioner, Bhagalpur Division dated – 25.10.2022 passed in Supply Revision Case No.03/2022-23 being against the procedure established by having been passed without considering materials advanced by the Petitioner cryptic and non speaking.

(v) For commanding the Respondents to restore the P.D.S. License of the Petitioner bearing License No.52/2016 and permitting him to carry on his business lawfully without any undue interference.

(vi) For holding the action of the Respondents initiating proceeding against the Petitioner and cancelling his License of P.D.S. without there being proper complaint of any misconduct, statement of any witness and finding any act of misconduct against the Petitioner is bad in law and fit to be set aside.”

3. Learned counsel appearing on behalf of the



petitioner has stated that the Sub-Divisional Officer while issuing the show cause notice to the petitioner has not enclosed the enquiry report and there is no proposal for cancellation of the license in the show-cause notice.

4. 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')

5. Further learned counsel has relied on the judgment of this Hon'ble Court in CWJC No. 253 of 2014 dated 11.03.2015 wherein this Hon'ble Court has held that the non-supply of the enquiry report along with the show-cause is bad and against the principle of natural justice and equity.

6. Learned counsel has further stated that petitioner has taken the above ground in the appeal and revision, both the appellate as well as Revisional authority has not dealt with the above ground and dismissed the appeal in a mechanical manner.

7. Learned counsel for the petitioner has also relied on the judgment of the Full Court 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.

8. Learned counsel has stated in view of the above mentioned provisions of law and judgments 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 also furnish a copy of the enquiry report along with the said show-cause notice and thereafter take necessary action.

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

10. This Court in CWJC No. 253 of 2014 dated 11.03.2015 held as under:

"In my opinion, irregularities in maintenance of notice board or maintenance of the stocks within the premises of the petitioner are too trivial and cannot form a basis for cancellation of licence. No doubt there were other serious charges against the petitioner regarding non-issuance of cash-memo to the consumers, distribution of lesser amount of



kerosene oil and non-distribution of food-grains but surprisingly even while making such allegations, the names of such consumers who are dissatisfied by such action of the petitioner are conspicuously missing. The allegations are sweeping in nature without reference to any specific consumer.

In my opinion the non-supply of the enquiry report conducted by the District Level Committee which is the foundation for issuance of show cause notice placed at Annexure-1 as well as non-supply of names of such of the consumers who had complained against the petitioner as regarding the irregularities in distribution of the food-grains or the kerosene oil has prejudiced the petitioner to file his purposeful reply and in absence thereof, the order impugned in my opinion, are based on no materials.

Though it was strenuously argued by Mr. Pandey that in absence of any response by the petitioner the allegations would be deemed to have been admitted but in my opinion even if the show cause reply was missing, the orders passed by the statutory authorities having civil consequences and resulting in cancellation should reflect application of mind. Unfortunately it is grossly missing inasmuch as neither the order of the Licensing Authority nor the order of the appellate authority deal with the materials which formed the basis to drive home the charges. The orders impugned are indefensible and cannot be upheld."

11. Further 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. ”

12. A perusal of the show-cause notice issued to the petitioner does not reveal that the copy of the enquiry report was enclosed along with the show-cause notice and that there is no proposal of the action sought to be taken against the petitioner.

13. 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 dated 03.03.2022 in Supply Appeal Case No. 208/2019-20 passed by the appellate authority, order dated 25.10.2022 in Supply Revision Case No. 03/2022-23 passed by the Revisional Authority and order dated 18.09.2029 in Case No. 01/2019-20 passed by the Learned Sub Divisional Magistrate, Sadar are set aside. The matter is remanded back to the Sub-Divisional Officer (Respondent No. 4) 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 also furnish a copy



of the enquiry report along with the Show Cause Notice to the petitioner and call for his explanation by giving reasonable time.

14. 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 orders strictly in accordance with law duly taking into consideration the explanation submitted by the petitioner.

15. 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.

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

(A. Abhishek Reddy , J)

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