

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.746 of 2019

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Dukhit Paswan, aged about 74 years, Male, S/o Madhav Paswan, Resident of
Lala Bigaha, Rewan, P.S.- Masaurhi, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
2. The Collector, Patna.
3. The Sub Divisional Officer, Masaurhi, Patna.
4. The Block Supply Officer, Masaurhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. N.K. Agrawal, Sr. Adv. with
Mr. Dhananjaya Nath Tiwari, Adv.
Mr. Kumar Rajeev, Adv.

For the Respondent/s : Mr. Arvind Ujjwal, Adv.

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

2 16-01-2024 Heard learned counsel for the parties.

2. The present Writ Petition has been filled for the
following reliefs:-

“That the present writ application is being filed on behalf of the sole petitioner above named for setting aside the order contained in memo no. 315 dated 12.06.2018 by which the PDS license was suspended and further for quashing the order contained in memo no. 405 dated 06.07.2018 by which the PDS license of the petitioner being license no. 64/2016 granted under the provisions of PDS Order 2016 for carrying on business of Fair Price Shop



has been cancelled and further be pleased to restore the PDS license of the petitioner and also restore the supply of the petitioner.”

3. Learned counsel appearing on behalf of the petitioner has stated that the show cause notice issued to the petitioner does not contain the proposal for cancellation of the petitioner's licence and the same is contrary to the Rule 27 (ii) of the Bihar Targeted Public Distribution System (Control) Order, 2016. Learned counsel has relied on the Judgement of the this Hon'ble Court passed in CWJC No. 21202 of 2021 and analogous cases dated 26.09.2023 to buttress his contention. Further, learned counsel has stated that the petitioner could not file his explanation within the stipulated time and the authority concerned has passed the order of cancellation solely on the ground that the petitioner has not filed his explanation. Learned counsel has stated that a Division Bench of this Hon'ble Court in L.P.A. No. 861 of 2004 dated 06.09.2004 has held that even if the licence holder does not file explanation to the show cause notice, the authority concerned is legally bound to pass orders on its own merits. Learned counsel has therefore prayed this Court to set aside the impugned order and remanded the matter back to the authority concerned for issuing a fresh show cause notice in compliance with the Rule 27 (ii) of the Bihar Targeted



Public Distribution System (Control) Order, 2016 and an opportunity may be granted to the petitioner to file his explanation and then a reasoned order passed.

4. Per contra the learned counsel for the respondents has vehemently opposed the very maintainability of the present writ petition has stated that the petitioner has statutory remedy of filing his appeal before the District Magistrate. Learned counsel has stated that the petitioner without availing the statutory remedy has preferred the present writ petition and prayed for dismissal of the present writ petition.

5. 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. ”

6. Having regard to the above, the impugned order is set aside and the matter is remanded back to the authority concerned, the authority concerned shall issue a fresh show cause notice to the petitioner in compliance of the Rule 27 (ii)



Bihar Targeted Public Distribution System (Control) Order, 2016 giving reasonable time to the petitioner to file his explanation. On such explanation being filed, the authority concerned shall pass necessary orders strictly on its own merits. The entire exercise shall be completed as expeditiously as possible preferably within a period of eight weeks from the date of the receipt of the copy of this order.

7. It is needless to mention that before passing any orders, the petitioner shall be put on notice and given an opportunity of hearing. Any order passed shall be communicated to the party.

8. With the above observation, the present Writ Petition stands allowed to the extent indicated.

(A. Abhishek Reddy , J)

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