

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5550 of 2023

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Brij Bihari Ram S/o Late Ghurabhari Ram, Resident of Nonaura, Panchayat-
Hethuan Rajpur, P.S.- Rajpur, District- Buxar. ... Petitioner

Versus

1. The State of Bihar through the Secretary, Food and Consumer Protection
Department, Govt. of Bihar, Patna.
 2. The Commissioner, Patna Division, Patna.
 3. The Collector-cum-District Magistrate, Buxar.
 4. The Sub Divisional Officer-cum-Licensing Authority, Buxar.
 5. The Block Supply Officer, Rajpur, Dist. Buxar. ... Respondents
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Appearance :

For the Petitioner : Mr.Dhananjaya Nath Tiwari, Adv.
For the Respondents : Mr.Arvind Ujjwal (Sc 4)

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

4 29-08-2024 Heard the parties.

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

*(i) For issuance of appropriate writ/writs,
order/orders, direction in the nature of certiorari
quashing the order dated 17.11.2022 passed in
BTPDS Control Division 96/2021 passed by the
Learned Divisional Commissioner, Patna Division,
Patna whereby and where under he has confirmed the
order dated 22.01.2021 passed by the District
Magistrate, Buxar in Supply appeal Case No:
179/2019 by which the statutory appeal was
dismissed.*

*(ii) Further for quashing the order dated 22.01.2021
passed in Supply Appeal Case No. 179/2019 by the
District Magistrate, Buxar whereby and where under*



he has confirmed the order contained in Memo No. 22/2018-273 dated 8.06.2019 passed by the Learned S.D.O-cum- Licensing Authority, Rajpur, Buxar.

(ii) Further for quashing the order contained in Memo No. 22/2018-273 dated 8.06.2019 passed by the Learned S.D.O.-cum-Licensing Authority, Buxar by which the PDS license of the petitioner being License No. 40/2016 has been cancelled.

(iv) Further for issuance appropriate writ/order/direction for restoration of PDS License and/or the petitioner found to be entitled in the facts and circumstances of the case

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. The petitioner having exhausted all the remedies has approached this Court by way of this present CWJC that all the authorities have found that the petitioner has violated the provisions of the Control Order, 2016. That the said finding of fact arrived by all the authorities cannot be interpreted by the Hon'ble Court under Article 226 of the Constitution of India. 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 Revisional Authority dated 17.11.2022, passed in BTPDS Control Division Case No. 96 of 2021, by the Divisional Commissioner, Patna Division, Patna, the order passed by the Appellate Authority dated 22.01.2022, passed in Civil Appeal Case No. 179 of 2019, by the District Magistrate, Buxar, as well as the order passed by the Sub-Divisional Officer, Buxar, vide Memo No. 22/2018-23, dated 08.06.2019, are all 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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