

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3426 of 2024

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Kumar Gaurav, son of Dilip Kumar Verma, resident of village Bariyarpur, P.S. Sakra, District Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Food and Consumer Protection Department Government of Bihar, Patna.
3. The Divisional Commissioner, Tirhut Division, Muzaffarpur.
4. The District Magistrate, Muzaffarpur, District - Muzaffarpur.
5. The Sub-Divisional Officer, East Muzaffarpur, District- Muzaffarpur.
6. The Block Supply Officer, Minapur, District- Muzaffarpur.
7. The Block Supply Officer, Sakra, District - Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Anil Kuma, Adv.r
For the Respondent/s : Mr.Standing Counsel (26)

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

8 09-12-2024 Heard learned counsel for the parties.

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

“(I) For issuance of an appropriate writ in the nature of CERTIORARI for quashing the order dated 16.10.2023 passed by the Respondent no.3 in P.D.S. Appeal No. 168 of 2022, whereby and where under the Respondent no.3 was pleased to dismiss the revision application filed by the petitioner and affirm the order passed by the Respondent no.4.

(II) For issuance of an appropriate writ in the



nature of CERTIORARI for quashing the order dated 21.06.2022 passed by the Respondent no.4 in Supply Appeal Case No.10 of 2021-22 whereby and where under the Respondent no.4 was pleased to dismiss the appeal filed by the petitioner and affirm the order passed by the Respondent no.5 on the ground that the Respondent no.4 did not consider the grounds taken in the memo of appeal filed by the petitioner as also the perversity in the order passed by the Respondent no.5.

(III) For issuance of an appropriate writ in the nature of CERTIORARI 30.01.2021 for quashing the order dated passed by the Respondent no.5 and contained in his memo no.441 dated 30.01.2021 whereby and where under the Respondent no.5 was pleased to cancel the P.D.S. License of the petitioner being License No. 23-08-02-02/2016 with immediate effect on the ground that the charges leveled against in the petitioner as mentioned in the show cause notice and no opportunity of hearing was granted to the petitioner for the additional charges based upon which the impugned order was passed.

(IV) For issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent Authorities for restoration of petitioner's license and to allow him to continue with his shop and for a further



direction to the Respondents to allow the petitioner to lift the food grains and other essential commodities of the consumers attached with the petitioner's shop.

(V) For issuance any other appropriate writ/writs order/orders, direction/directions for which the writ petitioner would be found entitled under the facts and circumstances of the case.”

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.

4. 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.

5. Learned counsel has stated that 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 furnishing a copy of the enquiry report and any other material that they seek to rely on and give an opportunity of filing his explanation 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 as the petitioner has violated the provisions of the Bihar Targeted Public Distribution (Control) Order, 2016. Learned counsel has therefore prayed this Hon'ble Court to dismiss the present writ petition.

7. 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."

8. 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.

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 orders dated 16.10.2023, 21.06.2022 and 30.01.2021 passed by the Divisional Commissioner, the District Magistrate and the Sub-Divisional Officer, respectively, are set aside. The matter is remanded back to the Sub-divisional Officer (Respondent No. 5) for furnishing a copy of the enquiry



report and any other material relied on the petitioner and call for his explanation by giving 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 order, 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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