

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3749 of 2023

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Rajesh Kumar Sharma Son of Late Saryu Prasad Sharma, Resident of village
+ P.O. Chhevari, P.S. Ramgarh, District Kaimur (Bhabhua)

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection Department, Bihar at Patna.
2. Principal Secretary, Food and Consumer Protection Department, Bihar at Patna.
3. Commissioner, Patna Division, Patna.
4. District Magistrate-cum-Collector, Kaimur at Bhabhua.
5. Sub Divisional Officer, Mohaniya, P.S. Mohaniya, District Kaimur at Bhabhua.
6. Block Supply Officer, Ramgarh, P.S. Ramgarh, District Kaimur (Bhabhua)
7. Block Development Officer, Ramgarh, P.S. Ramgarh, District Kaimur (Bhabhua)
8. Circle Officer, Ramgarh, P.S. Ramgarh, District Kaimur (Bhabhua)

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sumeet Kumar Singh, Adv.
	:	Ms. Deepali Singh, Adv.
	:	Ms. Alka Singh, Adv.
	:	Mr. Kumar Avinash, Adv.
For the Respondent/s	:	Mr. S. Raza Ahmad (Aag5)

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

8 18-03-2024 Heard the learned counsel for the parties.

The present writ petition has been filed by the son of
the deceased PDS dealer.

The present writ petition has been filed for the
following reliefs:-

*“I. That the present writ petition
is being filed in the nature of certiorari for
quashing the order dated 13.10.2022
(Annexure-P/11) passed in Supply Revision*



Case No. 14 of 2022 passed by the Divisional Commissioner, Patna Division, Patna by which the order passed in the Supply Appeal No. 10/2020 passed by the Collector-cum-District Magistrate, Kaimur at Bhabhua as well as the order passed by the Licensing Authority-cum-Sub Divisional Officer in Supply Case No. 01/2022 dated 26.04.2020 has been affirmed and the license granted bearing PDS License No. 11/2016 has been cancelled; on the ground that the enquiry report has not been given to the petitioner at any point of time, there is violation of principles of natural justice;

II. That the present writ application is being filed in the nature of Certiorari for quashing the order dated 18.03.2021 (Annexure-P/7) passed in Supply Appeal No. 10/2020 passed by the Collector-cum-District Magistrate, Kaimur at Bhabhua as well as the order passed by the Licensing Authority-cum-Sub Divisional Officer in Supply Case No. 01/2022 dated 26.04.2020 (Annexure- P/5) respectively in relation to PDS License No. 11/2016; on the ground that the enquiry report has not been given to the petitioner at any point of time, there is violation of principles of natural justice;

III. And pass any such other order/ orders as this Hon'ble Court deem fit and proper;”

4. Learned counsel for the petitioner has stated that the order passed by the SDO is bad in law as the same is passed in an arbitrary manner and liable to be set aside. It is stated that the father of the petitioner died on 07.05.2022 during the pendency of the revision before the Divisional Commissioner. Though the said fact was brought to the notice of the Divisional



Commissioner and necessary application made for substituting the legal heirs of the deceased PDS dealer, the same was not carried out and the order is passed against the dead person. Learned counsel for the petitioner has stated that the impugned order passed by the Primary Authority i.e., the SDO, the Appellate Authority i.e., the District Magistrate and also the Revisional Authority i.e., the Divisional Commissioner are liable to be set aside on the ground that the same are in violation of the provisions of the Control Orders, 2016. Learned counsel has stated that the father of the petitioner was issued a show cause notice alleging two violations (1) there is some allegations of misbehaviour of the PDS licensee and (2) for the month of March, the list was not produced within 24 hours. That an explanation was submitted by the petitioner to the authority concerned but, the authority without going through the explanation submitted by the father of the petitioner has passed the order of cancellation in a mechanical manner. Learned counsel has stated that the authority concerned had called for an enquiry report on 26.04.2020 and the report was submitted on 26.04.2020 and on the very same day, the impugned order of cancellation has been passed. Learned counsel has stated that the copy of the inquiry report was not furnished to the petitioner



and the petitioner was given only 24 hours to file his explanation to the said show cause notice. Learned counsel has further stated that as against the two allegations made against the petitioner in the show cause, in the impugned order, the authorities have taken five grounds for cancelling the license of the petitioner therefore, the same is in violation of the principles of natural justice and equity. Though the father of the petitioner has challenged the order of cancellation passed by the SDO before the District Magistrate, by way of appeal, the same was rejected. Further, learned counsel has stated that once the order passed by the SDO is held to be bad, the Appellate as well as order passed by the Revisional Authority have to necessarily set aside. Learned counsel has relied on the judgment of the Hon'ble Supreme Court in the case of *Institute of Chartered Accountants of India vs. L.K. Ratna & Ors.* reported in **1986 4 SCC 537** to buttress his contention. Further, it is stated that the order passed against a dead person by the Revisional Authority is also liable to be set aside, as the same is *void ab initio* and nullity in the eye of law.

5. *Per contra*, learned counsel appearing on behalf of the respondent-Authority has vehemently opposed the very maintainability of the present writ petition and stated that the



petitioner has a remedy of filing an application under Rule 10 of the Control Order, 2016 for considering his case under the compassionate appointment. Learned counsel has therefore, prayed this Hon'ble Court to dismiss the present writ petition.

6. Admittedly, in the present case, the order passed by the Revisional Authority is against the dead person. Even though the petitioner has filed a substitution petition seeking to bring the legal representatives of the deceased PD Dealer to prosecute the case, the authority for reasons best known to them did not substitute the legal heirs and passed the order against a dead person. The impugned order passed by the Revisional Authority is liable to be set aside on this ground alone and the same is accordingly set aside. That insofar as the contention of the petitioner with regard to the Appellate as well as the order passed by the SDO is concerned, a perusal of the show cause notice issued to the petitioner reveals that the petitioner's father was granted only 24 hours to file his explanation and the copy of the inquiry report was not furnished to him. This Court has held in catena of cases that non furnishing of the enquiry report along with the show cause notice is bad in law and against the provision of the Control Orders, 2016. The furnishing of the enquiry report along with the show cause notice is mandatory on



the licensee so as to enable him effectively counter the allegations made against the said dealer. Further, it is to be noted that in the show cause notice issued to the father of the petitioner only two allegations were made, whereas the authority while passing the order of cancellation has relied on the inquiry report where five allegations were made. On this grounds also the impugned order passed by the SDO has to be necessarily set aside. Once the order of the Primary Authority is found to be defective, bad and illegal to be set aside, the order passed by the Appellate Authority cannot stand on its legs and the same has to be necessarily set aside. Further, it is to be noted that the original PD dealer has died and therefore, no useful purpose will be achieved if the proceedings are allowed to continue against the dead person. The legal heirs of the deceased PD holder cannot be made liable for the lapses, if any committed by the deceased PD holder.

7. Having regard to the same, this Court is of the opinion that the ends of justice would be met if the impugned orders passed by the SDO dated 26.04.2020, the Appellate Authority order dated 18.03.2021 and the Revisional Authority order dated 13.10.2022 are hereby set aside. If the petitioner is so advised, the petitioner is directed to file an application under



Rule 10 of the Control Orders, 2016 on the compassionate appointment within a period of four weeks from the date of receipt of a copy of this order. If any such application is filed, the same shall be dealt with in accordance with law without being prejudiced by the earlier order of cancellation of license which has been set aside by this Hon’ble Court. The entire exercise shall be completed as expeditiously as possible preferably within a period of eight weeks from the date of receipt of the copy of the application for compassionate appointment made by the petitioner.

8. With the above direction, the present writ petition stands allowed to the extent indicated.

(A. Abhishek Reddy, J)

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