

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7245 of 2023

=====

Lalita Devi, Female, aged about 55 years, Wife of Khiro Choudhary, resident of Village- Pairdominiya Mal, Panchrukhi, Police Station- Shahkund, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. Principal Secretary, Food and Supply Department, Government of Bihar, Patna.
3. The Commissioner, Bhagalpur Division, Bhagalpur.
4. The District Magistrate, Bhagalpur.
5. The S.D.O., Sadar, Bhagalpur.
6. The District Supply Officer, Bhagalpur.
7. The Block Supply Officer, Shahkund, District Bhagalpur.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Md. Najmul Hodda, Adv.

For the Respondent/s : Mr. S. Raza Ahmad (AAG-5).

=====

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

7 29-01-2024 Heard learned counsel for the parties.

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

“(i)For issuance of a writ of certiorari or any other appropriate writ order or direction for quashing the subsequent letter dated 18.07.2018 contained in memo no. 583 issued by the respondent no. 5. The S.D.O., Sadar Bhagalpur by which he has most arbitrarily and quite erroneously cancelled the petitioner's Fair Price Shop bearing Licence No. 59 of 2016



without considering the merit of the case as well as without interpretation of Rule 28 of the Bihar Targeted P.D.S. (Control) order, 2016.

(ii) For issuance of a writ of certiorari or any other appropriate writ order or direction for quashing the order dated 01.11.2021 in Supply Appeal Case No. 78 of 2019-20 passed by Respondent No. 4 The District Magistrate, Bhagalpur by which he has rejected the appeal by confirming the order dated 18.07.2018 issued by the S.D.O., Sadar, Bhagalpur, which he has cancelled the P.D.S. License of the petitioner.

III. For issuance of a writ of certiorari or any other appropriate writ order or direction for quashing the order dated 25.10.2022 in Supply Revision Case No. 01/2022-23 passed by Respondent No. 3 The Commissioner, Bhagalpur dismissing the revision application by affirming the order dated 18.07.2018 and 01.01.2021 respectively passed by the S.D.O., Sadar, Bhagalpur and District Magistrate, Bhagalpur.

IV. For issuance of a writ of mandamus or any other appropriate writ order or direction commanding the Respondent Authorities to permit the petitioner to run her fair Price Shop by restoring her P.D.S. license No. 59 of 2016 by setting aside the aforesaid order/orders which are under challenge.”

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 as the petitioner has exhausted



all the remedies and all the authorities have found that the petitioner has violated the provisions of the Control Order, 2016. 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 licensee 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 be held as bad, illegal, contrary to the provisions of Rule 27(ii) of the Control Order and has to be 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 dated 18.07.2018 passed by the S.D.O., Sadar Bhagalpur, the order dated 01.11.2021 passed by the District Magistrate, Bhagalpur and the order dated 25.10.2022 passed by the Commissioner, Bhagalpur Division, Bhagalpur are 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)

shakir/-

U			
---	--	--	--

