

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6144 of 2023

Md. Ilyas S/o Md. Samsuddin Resident of Village-Khorhara, P.S.-Barahat,
District

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection Department, Old Secretariat, Patna.
2. The Divisional Commissioner, Bhagalpur Division, Bhagalpur,
3. The Collector Cum District Magistrate, Banka.
4. The Sub-Divisional Officer, Banka, District-Banka.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Chandrasekhar Sharma, Adv.
For the Respondent/s : Mr. Arvind Ujjwal (Sc 4)

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

14 18-04-2024

Heard learned counsel for the parties.

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

“i. For issuance of writ or writs in the nature of certiorari to quash the order of Sub-Divisional Officer, Banka issued vide Memo No.-190 dated 18.06.2020 by which license of Fair Price Shop bearing No.-47/12 has been cancelled and be further pleased to quash the order dated 26.08.2022 passed by the Collector, Banka in Supply Appeal No.-989/21-22 rejecting



the appeal and confirmed the order of SDO, Banka and be further pleased to quash the order dated 08.02.2023 passed by Divisional Commissioner, Bhagalpur in Supply Revision Case No.- 52/2022-23 by which Revisional Court has rejected that revision and confirmed the order of the Collector passed in an Appeal No.-989/21-22.

ii. For issuance of writ in the nature of mandamus commanding and directing the respondents to restore the PDS Shop License of the petitioner.”

3. Learned counsel appearing on behalf of the petitioner has stated that the impugned orders dated 18.06.2020 in Memo No. 190 passed by the Sub-Divisional Magistrate, Banka i.e. Respondent No. 4, order dated 26.08.2022 passed by the Collector, Banka in Supply Appeal No.-989/21-22 and the order dated 08.02.2023 passed by Divisional Commissioner, Bhagalpur in Supply Revision Case No.- 52/2022-23 respectively are liable to be set aside as the same is against the principles of natural justice and equity. Learned counsel has stated that though the petitioner has submitted a detailed explanation to the show cause notice, the Sub-Divisional Magistrate has not considered the said explanation and passed the orders in a mechanical manner. Learned counsel has,



therefore, prayed this Court to set aside the impugned order and remand the matter back to the Sub Divisional Magistrate for passing orders afresh duly taking into consideration the explanation submitted by the petitioner.

4. *Per contra*, the learned counsel for the respondents has vehemently opposed the very maintainability of the present Writ Petition and stated that the petitioner has an alternative and efficacious remedy of filing an appeal before the District Magistrate. Learned counsel has stated that the orders passed by the Sub-Divisional Officer is well reasoned order and does not require any interference of this Court and prayed to dismiss the present Writ Petition.

5. A perusal of the order passed by the Sub-Divisional Magistrate shows that the Sub-Divisional Magistrate while passing the orders has not adverted to the explanation submitted by the petitioner. Even though the petitioner has given a detailed explanation to the show cause notice, the Sub-Divisional Magistrate has not discussed the explanation submitted by the petitioner and passed the orders in a mechanical manner. This Court in a catena of cases, has held that any order that is passed has to contain the reasons for passing the said orders. Unless and until the reasons are given in the impugned order, the



superior authority or the Court will not be in a position to appreciate the order passed and the reason for the order being passed. In absence of any reasons in the order, it would be very difficult to either sustain or set aside the said order. Any order which is not speaking order cannot be sustained in the eye of law and the same has to be necessarily set aside.

6. This Court as well as the Apex Court, on number of occasions have held that any authority Court/quasi judicial authority have to necessarily give reasoning in the order passed by them. Unless reasoning is given in the order, neither the party nor Courts before whom the order is challenged will be in a position to appreciate as to what has weighed with the said authority either for dismissing or allowing the application of the petitioner. Though the quasi judicial or administrative authority are not obligated to give a lengthy or elaborate reasoning as in the case of Judicial order, yet they are expected to give a reasoned order which should be precise, concisely setting out the reason for allowing or dismissing the contention/application/case.

7. In **Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota vs. Shukla and Brothers**, reported in (2010) 4 SCC, 785, the Hon'ble



Supreme Court has held as under:

“..... while exercising the power of judicial review on administrative action and more particularly the judgment of courts in appeal before the higher court, providing of reasons can never be dispensed with. The doctrine of audi alteram partem has three basic essentials. Firstly: a person against whom an order is required to be passed or whose rights are likely to be affected adversely must be granted an opportunity of being heard Secondly, the authority concerned should provide a fair and transparent procedure and lastly, the authority concerned must apply its mind and dispose of the matter by a reasoned or speaking order.....”

“.....A litigant who approaches the court with any grievance in accordance with law is entitled to know the reasons for grant or rejection of his prayer Reasons are the soul of orders Non- recording of reasons could lead to dual infirmities: Firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. These principles are not only applicable to administrative or executive actions, but they apply with equal force and, in fact, with a greater degree of precision to



judicial pronouncements. The orders of the court must reflect what weighed with the court in granting or declining the relief claimed by the applicant."

8. Having regard to the above mentioned facts and circumstances, the impugned orders dated 18.06.2020 in Memo No. 190 passed by the Sub-Divisional Magistrate, Banka i.e. Respondent No. 4, order dated 26.08.2022 passed by the Collector, Banka in Supply Appeal No.-989/21-22 and the order dated 08.02.2023 passed by Divisional Commissioner, Bhagalpur in Supply Revision Case No.- 52/2022-23 respectively are set aside and the matter is remanded back to the Sub-Divisional Magistrate for passing orders afresh. The Sub-Divisional Officer shall pass a reasoned order duly taking into account the various contentions raised by the petitioner in his explanation.

9. It is needless to mention that before passing any order the petitioner shall be put on notice and 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 the copy of this order. Any order passed shall be communicated to the party.

10. Accordingly, the present Writ Petition stands



allowed to the extent indicated.

(A. Abhishek Reddy , J)

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