

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5486 of 2024

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Shailendra Kumar Son of Shivcharan Ram, Resident of Village- Amarpura,
P.S. - Naubatpur, District – Patna. ... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Food and Civil Supply Department, Government of Bihar, Patna.
2. The Principal Secretary, Food and Civil Supplies Department, Government of Bihar, Patna.
3. The Divisional Commissioner, Patna.
4. The District Magistrate, Patna.
5. The Sub-Divisional Officer, Danapur, Patna-Cum-Licensing Authority, Patna.
6. The Block Supply Officer, Naubatpur, Patna. ... Respondents

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Appearance :

For the Petitioner : Mr.Arvind Kumar, Adv.
For the Respondents : Mr.Standing Counsel 4

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

8 02-12-2024 Heard the parties.

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

“i. For issuance of writ in the nature of Certiorari to set aside the order dated 26.10.2023 passed by the Divisional Commissioner, Patna (respondent No.3) as well as order dated 12.12.2020 passed in E.C. Appeal No. 20/2019-20 passed by the District Magistrate, Patna (respondent No.4) whereby and whereunder the applications filed by the petitioner have been dismissed on the ground that the appeal is barred by limitation.

ii. Further quashing of order contained in Memo No. 1150, dated 30.11.2011, passed by Sub-Divisional Officer, Patna-Cum- Licensing Authority, by which the PDS License of the petitioner has been cancelled by the respondents on the ground that the shop in



question was found to be closed on the day of inspection and the other reason, which has been assigned for cancellation of the P.D.S. licence of the petitioner, is that there were several allegations against him by the local people.

iii. For issuance of any other relief or relief(s) for which the petitioner is entitled for.”

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 this 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 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 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 26.10.2023, the order passed by the Appellate Authority dated 12.12.2020 as well as the order passed by the Sub-Divisional Officer, Danapur Patna (Respondent No. 5) vide Memo No. 1150, dated 30.11.2011 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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