

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7901 of 2019

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Dilip Kumar Yadav Son of Sri Bhimal Yadav @ Vimal Chaudhari, Resident of
Village - Lakhanakhas, P.S. - Uchakagaon, District- Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar through the principal Secretary, Food and Consumer Protection Department, Govt. Of Bihar, Patna.
2. The Divisional Commissioner, Saran Division, Chapra.
3. The Collector cum District Magistrate, Gopalganj at Gopalganj.
4. The Sub Divisional Officer, Hathua, District - Gopalganj.
5. The Block Supply Officer, Uchakagaon, District - Gopalganj.
6. The Block Supply Inspector, Uchakagaon, District - Gopalganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Uday Pratap Singh, Adv.
For the Respondent/s : Mr. Arvind Ujjwal (Sc4)

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

3 16-01-2024 Heard the learned counsel for the petitioner and the
counsel appearing on behalf of the respondents.

2. Learned counsel for the petitioner has stated that the authority concerned while issuing show cause notice to the petitioner has levelled nine charges against the petitioner to which the petitioner has submitted his detail explanation. Learned counsel has also stated that along with the said explanation he has also filed the affidavits of the consumers/complainants who have alleged to have made the complaint against the petitioner. However, the authorities concerned has passed the order of cancellation on a fresh ground



that the petitioner was not personally running the shop at the time of inspection but the same was being run by one Subhash Yadav. Learned counsel has stated that the above ground taken by the authority for cancelling the license was not alleged in the show cause notice. Learned counsel has further stated that though the petitioner has preferred a statutory appeal as well as a revision before the concerned authorities, they have not considered the above ground raised by the petitioner and dismissed the appeal and revision in a mechanical manner. Further, it is stated that the impugned order is liable to be set aside as none of the consumers were examined by the authority before the order of cancellation was passed. Learned counsel has relied on the judgment of this Hon'ble Court in C.W.J.C. No. 2477 of 2019 dated 29.04.2019. Therefore, learned counsel has prayed this Hon'ble Court to set aside the impugned order.

3. A perusal of the impugned order reveals that the impugned order of cancellation was passed by the authority on the grounds that the petitioner was not running the shop at the time of inspection and same was being done by one Subhash Yadav. However, the said allegation is not mentioned in the show cause notice issued to the petitioner. Moreover, as seen from the record the petitioner has submitted a detailed



explanation to the show cause notice along with the affidavits of the consumers who have alleged to have made a complaint against the petitioner. However, the Sub Divisional Officer has not considered the same while passing the impugned order. Even the Appellate as well as the Revisional Authorities have not dealt with this aspect and passed the orders in a mechanical manner without adverting to any of the grounds raised by the petitioner in the appeal or revision.

4. This Hon'ble Court in C.W.J.C. No. 2477 of 2019 dated 29.04.2019 has held as under;

“ The petitioner submitted his reply along with the affidavit(s) of the consumers but those affidavits were not accepted by the Sub-Divisional Officer, Nimchak Bathani, Gaya saying that those affidavit(s) have been managed. In the opinion of this Court, once the petitioner was able to place on record the affidavit(s) of the consumers, the veracity of the complaint were required to be examined by conducting necessary verification by the Sub-Divisional Officer and only thereupon an independent view of the matter could have been taken. It has not been done in the present case. For these reasons the impugned order is liable to be held bad.”

5. Having regard to the above, this Court is of the opinion that the impugned order is liable to be set aside on the



ground of non consideration of the explanation submitted by the petitioner and also on the ground that the authority has taken a fresh ground for passing the impugned order which does not find place in the show cause notice. Therefore, the impugned order passed by the Sub-Divisional Officer dated 21.12.2016 is set aside and the matter remanded back to the Sub-Divisional Officer concerned for passing orders afresh duly taking into consideration the explanation submitted by the petitioner along with the affidavits of the consumers.

6. Accordingly, the order passed by the Sub-Divisional Officer dated 21.12.2016 is set aside. Once it is held that the initial order passed by the Sub-Divisional Officer is bad and cannot be sustained the subsequent order passed by the appellate as well as the revisional authority have no legs to stand and consequently they have to be also set aside and same are accordingly set aside. The Sub-Divisional Officer concerned shall put the petitioner on notice and duly giving him an opportunity of hearing, leading any evidence and the matter shall be decided on merits in accordance with law. The Sub-Divisional Officer concerned shall endeavor to see that the case is disposed off as expeditiously as possible preferably within a period of ten weeks from the date of receipt of a copy of this



order. Any order passed shall be communicated to the parties.

7. With the above directions, the present writ
petition stands disposed of.

(A. Abhishek Reddy , J)

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