

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7634 of 2023

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Awadhesh Paswan S/o Yadav Paswan, Resident of Bijbani, P.S.- Jitna,
District- East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Food and Consumer Protection , Government of Bihar, Patna.
2. The Commissioner, Tirhut Division Muzaffarpur.
3. The Collector-cum-District- Magistrate, East Champaran at Motihari.
4. The Sub Divisional Officer, Sikarahana, Dhaka, District- East Champaran.
5. The Block Supply Officer, Bankatwa, District- East Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner	:	Mr. Surendra Kishore Thakur, Adv. Mr. Subodh Kumar, Adv.
For the State	:	Mr. Anisul Haque, AC to AAG-5

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

10 22-01-2024 Heard learned counsel for the parties.

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

(i) For issuance of writ in the appropriate nature for quashing of the order dated 20.03.2023 passed by the Commission, Tirhut division, Muzaffarpur in P.D.S. Revision Case No. 155/ 2022 whereby and where under the Commission, Tirhut Division, Muzaffarpur has confirmed the order passed by the District Magistrate, East Champaran, Motihari in Supply Case No. 61/2014 whereby the District



Magistrate has confirmed the order passed by the Sub-Divisional Officer, Sikarahna, Dhaka whereby the PDS Licence of the petitioner has been cancelled.

(ii) For further quashing of the order date 27.08.2019 passed by the District Magistrate, East Champaran, Motihari in Supply Appeal No. 61/2014.

(iii) For further quashing of the order contined in Memo No. 07 dated 03.01.2015 passed by the Sub-Divisional Officer, Sikarahna, Dhaka, East Champaran, whereby the licence of the petitioner was cancelled.

(iv) For further direction to the Respondent authorities to consider afresh for restoration of PDS Licence of the petitioner.

3. Learned counsel for the petitioner has stated that the impugned order of cancellation has been passed on the ground that the petitioner has been indulging in black marketing, that the shop was closed at the time of inspection, that the petitioner has not displayed the board, that the consumers have given a complaint that the petitioner was giving less quantity of kerosene and that the petitioner has run away from the shop. Learned counsel has stated that the petitioner has



given a detailed explanation to the show cause notice along with the statements of the consumers numbering about 24 stating that they have no grievance against the petitioner, however, the authority without considering the explanation and the annexures has passed the impugned order of cancellation. Learned counsel has stated that in the order of cancellation, the authority has taken a new ground alleging that the petitioner is indulging in black marketing of the commodities. Counsel has further stated that even though the petitioner has filed an appeal and thereafter revision before the concerned authority, the grounds raised by the petitioner were not considered by the said authorities. That both the appellate and revisional authority have passed the order in a mechanical manner and have not considered the statements given by the consumers to the effect that they have no complaint/ grievance against the petitioner and that they are receiving the commodities regularly. Further, learned counsel has stated that the petitioner had to take his wife for treatment on the date of inspection therefore, the shop was closed. Learned counsel has relied on the judgment of the Hon'ble High Court reported in 2012 (3) PLJR 583.

4. Per contra, learned counsel appearing on behalf of the respondents has vehemently opposed the present writ



petition. Learned counsel has stated that all the three authorities i.e. the Primary Authority, the Appellate Authority as well as the Revisional Authority duly taking into account the serious allegations made against the petitioner have cancelled the P.D.S. license. Learned counsel has stated that the orders passed by the appellate as well as the revisional authority are well reasoned orders and do not need any interference from this Hon'ble Court. Therefore, learned counsel for the respondents has prayed for dismissing the present writ petition.

5. A perusal of the show cause notice issued to the petitioner reveals that as on the date of inspection, the petitioner shop was closed and the other allegations against the petitioner were that he has not displayed the board, that the customers have given complaint stating that the petitioner is giving less quantity of kerosene, and that the petitioner has run away from the shop after seeing the officials. The petitioner has submitted a detailed explanation to the said show cause notice and also annexed statements of 24 consumers who have stated that they do not have any grievance against the petitioner, that they are receiving monthly commodities in time and there is no material discrepancy in the quantity given to them. However, the said explanation has not been considered by the primary authority



before passing the order of cancellation.

6. Moreover as seen from the order of cancellation, the authority has taken a new ground for cancelling the license of the petitioner. In the order of cancellation, it is stated that the petitioner is also indulging in black marketing. Admittedly, the above said allegation was not disclosed in the show cause notice issued to the petitioner. Both the appellate authority as well as the revisional authority have not considered the above grounds raised by the petitioner and have not taken into consideration the statements given by the consumers. This Court as well as the Hon'ble Supreme Court in the catena of cases has time and again held that non-consideration of the explanation submitted by the petitioner while passing the impugned order vitiates the entire exercise and any such order passed is against the principles of natural justice but bad in law. Non-consideration of the explanation submitted by the petitioner vitiates the entire order and the same is liable to be set aside and accordingly the order dated 03.01.2015 passed by the Sub Divisional Officer, Sikarahnna, Dhaka, East Champaran is hereby set aside. Once the order of cancellation passed by the Sub Divisional Officer is set aside, the order passed by the appellate as well as the revisional authorities do not have any legs to stand on their own and,



therefore, the same have to be necessarily set aside and accordingly set aside.

7. Having regard to the above, the impugned order of cancellation dated 03.01.2015 is set aside and the matter remanded back to the Sub Divisional Officer, Sikarahna, Dhaka, East Champaran for passing orders afresh. The authority shall pass orders duly taking into consideration the explanation submitted by the petitioner and also the statements given by 24 consumers annexed along with the said explanation. 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 by the authority shall be communicated to the party. It is needless to mention that before passing any order, the petitioner shall be given an opportunity of hearing.

8. It is stated by the counsel that till date, no new license has been issued to anybody and the license of the petitioner which was cancelled has been attached to another PDS dealer. That in case the petitioner is so advised, he can make a representation before the concerned authority for restoration of license and on such representation, the same shall be considered in accordance with law.



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

(A. Abhishek Reddy , J)

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