

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8296 of 2024

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Baban Ram Son of Vishwanath Ram, resident of village-Parauna. Panchayat-Bhatgai. Block-- Taraiya. P.S.- Amnour, District- Saran (Chapra).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Food and Consumer Protection, Bihar, Patna.
2. The Principal Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
3. The Commissioner, Saran Division, Chapra.
4. The District Magistrate, Saran (Chapra).
5. The Sub-Divisional Officer, Marhaura, Saran (Chapra).
6. The Block Supply Officer, Masrakh, Saran (Chapra).
7. The Block Supply Officer, Amnour, Saran (Chapra).

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Kishore Singh
For the Respondent/s : Mr. Addl. Advocate General (12)

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY

ORAL JUDGMENT

Date : 25-07-2024

Heard the learned counsel for the parties.

The present writ petition has been filed for the
following reliefs:-

“(i) to quash the Order dated 29.05.2023 passed by the Learned Court of the District Magistrate, Saran, Chapra in Supply Appeal Case No. 04/2019 by which the learned Appellate Authority without dealing with the defense put up by the Petitioner in his Appeal Case No. 04/2019 and without appreciating the apparent irregularity and illegality with the Order of Licensing Authority dated



19.12.2018 contained in Memo No. 2190 of the Sub-Divisional Officer, Marhaura, has dismissed Petitioner's Appeal.

(ii) To quash the Order dated 19.12.2018 contained in Memo No. 2190 of the Sub-Divisional Officer, Marhaura by which Licensing Authority erroneously held the charges proved against the Petitioner and cancelled Petitioner's license to run a fair price shop under the public distribution system.

(iii) To command/direct the Respondents to restore Petitioner's License for running a PDS Shop with immediate effect.

(iv) Any other relief/relief's to which the Petitioner may be found entitled in view of the facts and circumstances discussed hereinbelow."

3. Learned counsel for the petitioner has assailed the order of cancellation passed by the Sub-Divisional Officer, Marhaura, Saran (Chapra). Learned counsel has stated that pursuant to the inspection done by the Block Supply Officer, Masrakh the petitioner was issued show cause notice on 12.09.2018 alleging some irregularities. Thereafter, the petitioner has submitted his explanation, the Sub-Divisional Officer, Marhaura, Saran (Chapra) has referred the explanation submitted by the petitioner to the Block Supply Officer for his opinion and the Block Supply Officer conducted another enquiry and submitted a second report.



Learned counsel has stated that the conducting of the second enquiry behind the back of the petitioner without putting him on notice and not furnishing the copy of the second enquiry report vitiates the entire process and any order passed by the authority relying on the opinion of the Block Supply Officer is bad and illegal. That the Sub-Divisional Officer without application of mind has passed the impugned order on the basis of the second enquiry report submitted by the Block Supply Officer which has not been furnished to the petitioner. Learned counsel for the petitioner has relied on the following judgments of this Hon'ble Court passed in CWJC No. 414 of 2021 dated 21.09.2021 & and also in CWJC No. 21135 of 2021 dated 02.03.2022 passed by a Division Bench of this Hon'ble Court. It is further submitted that the appellate authority also did not take into consideration the grounds raised by the petitioner and dismissed the appeal filed by the petitioner in a mechanical manner.

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 is having an alternative and efficacious remedy of filing a



revision under the Provisions of the Bihar Targeted Public Distribution System (Control) Order, 2016. However, learned counsel has fairly conceded that the second enquiry report has not been furnished to the petitioner.

5. This Hon'ble Court in CWJC No. 414 of 2021 has held as under;

“the decision to cancel the license of the petitioner has been taken by the Sub-Divisional Officer, Pupri, only on the basis of the opinion of the Block Supply Officer, Sursand, submitted vide his letter dated 04.07.2020, which in any view of the matter was never supplied to the petitioner so as to seek his response with regard to the same and secondly, the same also amounts to non-application of independent mind by the Sub-Divisional Officer, Pupri, resulting in the impugned order dated 22.07.2020 being unsustainable in the eyes of law.”

6. Further, the Division Bench of this Hon'ble Court in CWJC No. 21135 of 2021 has held as under;

“Though we find that the Appellate Authority has taken pains to take into account the reply of the petitioner while sustaining the order of the Licensing Authority, but at the initial stage of passing the first, the Licensing Authority was manifestly wrong in not applying his mind and basing his opinion solely on the report of an authority which had inspected his shop and was asked for an opinion by the Licensing Authority with respect to issue of cancellation of the license of the petitioner.”

*The Hon'ble Supreme Court of India in **Institute of Chartered Accountants of India Vs. L.K. Ratna; 1986 (4) SCC 537**, it has been held that even if the appellate*



decision cannot be faulted for being a reasoned order; but if it was against an order by the original/Licensing Authority which did not actually apply its mind, such manifest original defect could not be restituted/cured by the Appellate Authority.”

7. Having regard to the above stated facts and circumstances of the case and the settled principles of law, the impugned order passed by both the appellate authority dated 29.05.2023 as well as the Sub-Divisional Officer, Marhaura, Saran (Chapra) dated 19.12.2018 are hereby set aside. The matter is remanded back to the Sub-Divisional Officer, Marhaura, Saran (Chapra) for passing orders afresh.

8. It is needless to mention that before passing any order, the petitioner shall be given an opportunity of hearing. In case the Sub-Divisional Officer wants to rely on the second enquiry report submitted by the Block Supply Officer, the same shall be furnished to the petitioner and he shall be given an opportunity of filing his explanation. The Sub-Divisional Officer shall pass a reasoned order. 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.



9. With the above direction, the present writ petition stands allowed to the extent indicated.

(A. Abhishek Reddy, J)

Ayush/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.07.2024.
Transmission Date	NA

