

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11274 of 2023

Shanti Kumari, W/o Upendra Kumar Mandal, Daughter of Upendra Prasad Singh, R/o- Mohalla- Shivaji Nagar, P.O. and P.S.- Habibpur, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary Food and Civil Supply Government of Bihar, Patna.
2. The Principal Secretary, Food and Civil Supply Government of Bihar, Patna.
3. The Divisional Commissioner, Bhagalpur, Bihar.
4. The District Magistrate, Bhagalpur.
5. The District Supply Officer, Bhagalpur.
6. The Sub-divisional Officer, Sadar, District- Bhagalpur.
7. The Block Supply Officer, Jagdishpur, District- Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Amrendra Kumar, Adv
For the Respondent/s : Mr. Arvind Ujjwal (Sc4)

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

3 19-01-2024 Heard the learned counsels for the parties.

2. This writ petition has been filed for seeking the following relief(s)

“1. For quashing the order passed in supply Revision Case no. 24/2022-23 dated 08.05.2023 as contained in memo no. 620 dated 08.05.2023, passed by The Divisional Commissioner, Bhagalpur, Bihar, whereby and where under the learned Commissioner has dismissed the revision filed on behalf of the petitioner only taking into the consideration the order passed by the appellate authority i.e District Magistrate District- Bhagalpur passed in Supply appeal case no, 122 (A)/2020-21.
II). For quashing of the order passed by the District Magistrate, Bhagalpur, whereby and where under the appeal filed on behalf of the



petitioner has been dismissed vide order dated 31.03.2022 passed in Supply Appeal case no. 122(A) of 2020-21 in a most arbitrary and illegal manner by unreasoned and cryptic order.

III). For quashing of the order passed by the Sub divisional Officer Sadar, Bhagalpur, passed in case no. 11/2020-21, vide order dated 23.07.2020 as contained in memo no. 746 dated 28.07.2020, whereby and where under the Fair Price shop of the petitioner under Public Distribution system bearing License no. 14/19, without granting any proper opportunity and without considering the reply filed on behalf of the petitioner and also without considering the fact that the notice which was issued was a defective notice as it does not contain any proposal of punishment pursuant to sub Rule (ii) of rule 27 of the Act, the PDS license of the petitioner was cancelled by a illegal, arbitrary, cryptic, unreasoned, unexplained order and the same is in violation of principals of Natural Justice and also in contravention of statutory provisions of the act and not sustainable in the eyes of law and the same is fit to be quashed.

IV. For quashing of the Show-cause notice as contained in memo no. 620 dated 27.06.2020, the show- cause notice is a defective notice, as it does not contain any proposal of punishment pursuant to sub Rule (ii) of rule 27 of the Act.

V. Further for direction to the respondents to restore the license and supply to the Fair Price shop of the petitioner License no. 14/19.”

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 as the petitioner has exhausted all the remedies and all the authorities have found that the



petitioner has violated the provisions of the Control Order, 2016. 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 license 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 08.05.2023, the order passed by the Appellate Authority dated 31.03.2022, as well as the order passed by the Sub-Divisional Officer, Sadar, Bhagalpur dated 23.07.2020 are



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.

Bhardwaj/-

(A. Abhishek Reddy , J)

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