

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10142 of 2023

Most. Chandar Devi W/o Bilekshan @ Vilekshan Chaudhary, R/o - Village-
Mahatha, Ward No. 08, PS- Ladaniya, District- Madhubani, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Food and Consumer Protection Department, Government of Bihar, Old Secretariat, Patna.
2. The Secretary, Food and Consumer Protection Department, Government of Bihar, Old Secretariat, Patna.
3. The District Magistrate-cum-Collector, Madhubani.
4. The District Selection Committee, Madhubani under the Chairmanship of District Magistrate, Madhubani.
5. The Sub-Divisional Officer-cum-Licensing Authority, Jainagar, Madhubani.
6. The Block Supply Officer, Ladaniya, Madhubani.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Dharmendra Kumar Paswan
For the Respondent/s : Mr. S. Raza Ahmad (Aag 5)

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

6 09-07-2024 Heard the learned counsel for the parties.

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

“1. For setting aside the order dated 25.03.2023 passed in Supply Appeal No. 14/2023 by Respondent No. 3, The District Magistrate-cum-Collector, Madhubani whereby and wherein the Appeal preferred by the petitioner has been cancelled by upholding the order contained in Memo No.01 Dated 02.01.2023 and order dated 11.04.2020 passed by Respondent No. 5, The Sub-Divisional Officer-cum-Licensing Authority, Jainagar, Madhubani which was filed against the cancellation of license no. 18/2016, which is not sustainable in the eye of the law in view of the material evidence,



facts and circumstances.

II. For quashing the Order contained in Memo No. 92/Aa. Dated 11.04.2020 and Memo No. 01 Dated 02.01.2023 passed by Respondent No. 5, The Sub-Divisional Officer-cum-Licensing Authority, Jainagar, Madhubani for cancellation of the PDS license of the petitioner bearing License No. 18/2016.

III. To hold and declare that the petitioner is entitled to run the Public Distribution Shop at Ladaniya Block, Sub-Division Jainagar, District Madhubani on being otherwise eligible, working to the best satisfaction of the superior authorities and local public as the petitioner had been working diligently with utmost dedication and integrity as the Public Distribution Dealer.”

IV. For grant of any other relief/s for which the petitioner is entitled under the law in the facts and circumstances of this case.

3. Learned counsel for the petitioner has stated that on earlier occasion, the appellate authority vide order dated 26.07.2022 had set aside the order of cancellation and remanded the matter back to the respondent No. 5 for passing orders afresh. That pursuant to the above said order, the SDO concerned has issued show cause notice dated 25.11.2022 (Annexure-7). Learned counsel has stated that the authority in the show cause notice instead of seeking the explanation of the petitioner to the charges levelled against the petitioner has stated that in case the petitioner does not file her explanation, the earlier order of cancellation will stand good. Learned counsel



has stated that once the appellate authority has set aside the earlier order of cancellation dated 11.04.2020, the question of reviving the said order which was already set aside does not arise. The said stand taken by the SDO clearly points out to the fact that the said authority has already made up its mind and the issuance of the show cause notice is only a mere formality. Learned counsel has stated that the show cause notice issued to the petitioner is illegal, arbitrary and bad in law and the same is liable to be set aside. Further, it is stated by the counsel that though the petitioner has submitted her explanation to the said show cause notice, the authority has not considered the same and passed the order of cancellation in a mechanical manner. That even the appellate authority has not adverted to the grounds of appeal and passed the impugned order confirming the order of cancellation. Learned counsel has therefore, prayed this Hon'ble Court to set aside the order of cancellation as well as the order passed by the appellate authority by allowing the present writ petition.

4. *Per contra*, the learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the present writ petition and stated that the authority duly taking into consideration the allegations against



the petitioner passed the order of cancellation. That the appellate authority did not find any merit in the appeal and dismissed the same. Further, it is stated that the petitioner is having an alternative remedy of filing a revision before the Divisional Commissioner under Rule 32(6) of the Control Order, 2016. Learned counsel has therefore, prayed this Hon'ble Court to dismiss the present writ petition.

5. A perusal of the show cause notice dated 25.11.2022 (Annexure-7), more specifically, the relevant portion reads as under;

“अतः बरती गई उपरोक्त अनियमितताओं के आलोक में आप पुनः अपना स्पष्टीकरण विन्दुवार साक्ष्य सहित एक सप्ताह के अन्दर निश्चित रूप से उपलब्ध कराना सुनिश्चित करें कि क्यों नहीं उपरोक्त बरती गयी अनियमितताओं के लिए आपकी अनुज्ञप्ति संख्या 18/2016 को रद्द किया जाना यथावत् रखा जाय।”

6. A reading of the show cause notice reveals that the authority has already made up his mind to cancel the license of the petitioner. Once the earlier order of cancellation has been set aside by the appellate authority and the matter remanded back to the authority concerned for passing orders afresh, the question of reviving the earlier order of cancellation does not arise.

7. Therefore, this Court is of the considered opinion that the show cause notice issued to the petitioner is bad in law



and has to be necessarily set aside. Consequently, the order of cancellation and that of the appellate authority are also liable to be set aside. The impugned orders are set aside and the matter remanded back to the SDO concerned for issuing afresh show cause notice to the petitioner strictly in compliance of Rule 27(2) of the Control Order, 2016 and giving him an opportunity of filing her explanation. On such explanation being filed, the authority shall pass a reasoned order strictly in accordance with law. The entire exercise shall be completed as expeditiously as possible preferably within a period of 12 weeks from the date of receipt of a copy of this order.

7. It is needless to mention that before passing any order, the petitioner shall be given an opportunity of hearing. Any order passed shall be communicated to the petitioner.

8. With the above direction, the present writ petition stands disposed of.

(A. Abhishek Reddy, J)

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