

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11101 of 2023

=====

Satish Kumar Singh (Male), aged about 51 years, Son of Late Ganesh Singh,
Resident of Village- Manorpur, P.S.- Jhakhra, 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, Amnour, Saran (Chapra).
7. The Block Supply Officer, Masrakh, Saran (Chapra).

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Ram Kishore Singh

For the Respondent/s : Mr. S. Raza Ahmad (Aag 5)

=====

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

3 15-01-2024 Heard learned counsel for the parties.

2. The present Writ Petition has been filled for the
following reliefs:-

*“(i) To quash the Order dated
24.04.2023 passed by the Learned Court
of the District Magistrate, Saran, Chapra
in Supply Appeal Case No. 33/2018 by
which the learned Appellate Authority
without dealing with the defense put up
by the Petitioner in his Appeal Case No.
33/2018 and without appreciating the
apparent irregularity and illegality with
the Order of Licensing Authority dated*



05.09.2018 contained in Memo No. 16 of the Sub-Divisional Officer, Marhaura, has dismissed Petitioner's Appeal

(ii) To quash the Order dated 05.09 2018 contained in Memo No. 16 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.”

3. Learned counsel appearing on behalf of the petitioner has stated that the impugned order passed by the Sub-Divisional Officer is liable to be set aside on the ground that the said authority has not independently applied his mind while deciding the matter. Learned counsel has stated that the authority concerned has obtained the opinion of the Block Supply Officer and relied on the same for passing the order of cancellation of the PDS licence of the petitioner. Further, learned counsel has stated that even though the petitioner has submitted a detailed explanation to the show cause notice along with the annexures containing about 81 pages, the same have not been considered by the authority concerned and the order is passed in a mechanical manner.



4. Further, 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 Rule 27(ii) of the Bihar Targeted Public Distribution System (Control) Order, 2016 (hereinafter referred to as 'the Order, 2016').

5. 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.

6. 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. Learned counsel has stated that the order impugned is also bereft of any reasoning, except discussing the facts of the case the authority has not



given any reason for passing the impugned order. Even though the petitioner has taken the above grounds before the appellate authority, the appellate authority has also not considered the same and passed the order in a mechanical manner dismissing the appeal filed by the petitioner and confirming the order of the Sub-Divisional Officer. Learned counsel for the petitioner has prayed this Court to set aside the impugned order as well as the appellate order.

7. Per contra, the learned counsel for the respondents has vehemently opposed the very maintainability of the writ petition and stated that the writ petitioner has an alternative and effective remedy of filing a revision before the Divisional Commissioner and therefore, prayed this Court to dismiss the present writ petition.

8. A perusal of the show cause notice issued to the petitioner reveals that there is no proposal for cancellation of the licence.

9. 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. ”

10. Further, Division Bench of this Hon'ble Court in CWJC No. 21135 of 2021 has held that the authority concerned can obtain the opinion of the Block Supply Officer but cannot solely rely on the same, the authority has to independently exercise his mind before passing the order. The impugned order of cancellation does not reveal that the authority has independently applied his mind except stating that as per the statements made by the complainants, the explanation submitted by the petitioner and also the opinion of the Block Supply Officer, the allegations made against the petitioner have been found true and passed the orders. The order does not reveal that no other reasons are given in the impugned order to substantiate the orders of cancellation. Therefore, the same has to be set aside. Once, it is held that the initial order of the cancellation is bad in law and liable to be set aside, the order passed by the appellate authority also does not have any legs to stand on its own and has to be necessarily set aside.

11. Having regard to the same, the impugned order dated 24.04.2023 passed by the District Magistrate, Saran,



Chapra as well as the order dated 05.09.2018 passed by the Sub-Divisional Officer, Marhaura are both set aside. In case, the authority feels that the licence of petitioner is liable to be cancelled then they shall put the petitioner on notice in compliance of the Rule 27 (ii) of the Bihar Targeted Public Distribution System (Control) Order, 2016 and take necessary action in accordance with law. In case, any show cause notice is issued to the petitioner, the authority concerned shall give reasonable time for filing his explanation and after receipt of the same, pass necessary orders strictly in accordance with law giving a reasoned order duly taking into consideration the explanation submitted by the petitioner.

12. This order does not preclude the petitioner from approaching the authority for restoration of his licence.

13. With the above directions, the present writ petition stands allowed to the extent indicated.

(A. Abhishek Reddy , J)

shakir/-

U			
---	--	--	--

