

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13726 of 2022

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Vimal Kumar Ray Son of Harihar ray Resident of Village- Harpur Bakhari
Mirzapur, Police Station Ahiyapur, District Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Chief Secretary, Bihar, Patna.
3. The Commissioner, Tirhut Division, Muzaffarpur.
4. The Collector Cum District Magistrate, Muzaffarpur.
5. The Sub-Divisional Officer, East, Muzaffarpur.
6. The Block Supply Officer, Mushahari Block, Muzaffarpur.
7. Nagendra Kumar, Son of not known the then Circle Office, Mushahari Anchal, District- Muzaffarpur, presently posted as Circle Officer, Dulhin Bazar Anchal, District- Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prafull Chandra Jha, Adv.
For the Respondent No.7:	:	Mr. Dinesh Maharaj, Adv.
For the State	:	Mr. S. Raza Ahmad, AAG5
	:	Mr. Anisul Haque, AC to AAG5

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

Date : 25-06-2024

Heard the learned counsel for the parties.

The present writ petition has been filed for the following

reliefs:-

“i. For quashing the order dated 20.05.2022 passed by the respondent no. 4 the Collector cum District Magistrate, Muzaffarpur passed in Appeal No. 30 of 2020-21 whereby and where under appeal preferred by the petitioner dated 10.06.2020 was rejected on baseless ground, the respondent no.4 did not consider the merit/ points of the petitioner and keeping the matter pending about two years whereas there was an order of Hon'ble High Court in C.W.J.C. No. 4119 of 2021 directing



the respondent no.4 to dispose of the matter within a period of three months.

ii) For quashing the order contained in memo no. 1517 dated 21.05.2020 passed by the respondent no.5, the Sub-Divisional Officer, East, Muzaffarpur by which license of PDS shop of the petitioner was cancelled.

iii) For initiation of a proceeding against the respondent no.4 for non compliance of order dated 21.12.2021 passed in C.W.J.C. No. 4119 of 2021 by which there was a direction to the respondent no.4 to dispose of the appeal of the petitioner within a period of three months but the respondent no.4 did not obey the order of this Hon'ble Court.

iv) For directing the respondent authorities to restore the license of PDS of the petitioner bearing License No. 23-01-07-05-2016 with immediate effect.

v) For all consequential reliefs to which the petitioner is found entitled in course of hearing of this writ application.”

3. It is the case of the petitioner that the petitioner has been granted PDS License and he was operating the same without any complaint from any person. That the inspection of the shop was conducted by the Circle Officer, Mushahari on 02.04.2020 and he has submitted a report dated 02.04.2020 to the Sub-Divisional Officer, East, Muzaffarpur. The Sub-Divisional Officer East, Muzaffarpur thereafter has issued a show cause notice to the petitioner dated 10.04.2020. That after receipt of the show cause notice, the petitioner has submitted his explanation on 14.04.2020. However, the SDO without appreciating the explanation submitted by the petitioner has passed the order of cancellation on 21.05.2020. Thereafter, the petitioner has preferred an appeal



before the respondent No. 4 i.e., the Collector-cum-District Magistrate, Muzaffarpur and the respondent No. 4 in a mechanical manner has dismissed the appeal without advertng to the grounds raised by the petitioner and also the documents filed before him vide order dated 20.05.2022. Learned counsel for the petitioner has stated that the petitioner had earlier filed a complaint before the *Lokayukt* way back in the year 2019 against the Circle Officer (Respondent No. 7 herein) and the same was taken cognizance by the *Lokayukt*. That the respondent No. 7 with an ulterior motive and having vengeance in heart has submitted a false report to the SDO and the SDO without considering the explanation submitted by the petitioner has passed the order of cancellation. That the appellate authority has also not considered the grounds raised by the petitioner nor the documents filed before him to show that none of the beneficiaries attached to the shop of the petitioner have any grievance against him and that the inspection report submitted by the respondent No. 7 was false and biased report made against the petitioner. Learned counsel has stated that the only allegation against the petitioner was on the basis of a complaint alleged to have been given by the four beneficiaries i.e., Mrs. Rinku Devi, Rajo Devi, Tuntun Ram, Amina Khatoon who are alleged to have stated that they did not receive the ration for the month of March



2020. Learned counsel has stated that the petitioner has stated in his reply that Mrs. Rinku Devi was taking ration from another shop and when she tried to take ration from the shop of the petitioner, the E-POS machine was showing that the portability is not available. That in so far as three other beneficiaries who have alleged to have given a complaint are concerned, the counsel for the petitioner has stated that they have themselves given signed notarised affidavits stating that they have no complaint against the petitioner and that they are getting the necessary ration as per schedule. Learned counsel has stated that even though the petitioner has filed the affidavits of the above three persons before the Collector, the Collector has failed to take the same into consideration and totally ignored the same. Further, it is stated that once an allegation of bias is alleged against a particular officer, in this particular case against the respondent No. 7 who has prepared the enquiry report, the authority ought not to have taken the same on face value and asked some other officer to submit a report but the same was not followed, thereby violating the principles of natural justice and equity. Learned counsel has therefore, prayed this Hon'ble Court to allow the present writ petition and set aside the orders of both the Collector-cum-District Magistrate,



Muzaffarpur dated 20.05.2022 and the Sub-Divisional Officer, East, Muzafarpur dated 21.05.2020.

4. *Per contra*, the learned counsel for the respondent-State has vehemently opposed the very maintainability of the present writ petition and stated that the orders passed by both the authorities are well reasoned orders which do not call for any interference by this Hon'ble Court. Learned counsel has stated that both the appellate as well as the primary authority duly taking into consideration the evidence on record and also finding that the petitioner has been violating the provisions of the Control Order, 2016 have passed well reasoned orders. Learned counsel has also stated that the petitioner did not file any evidence before the primary authority to substantiate his claim which are being canvassed in the appeal. Learned counsel has therefore, prayed this Hon'ble Court to dismiss the present writ petition.

5. Learned counsel for the respondent No. 7 while adopting the arguments made by the counsel appearing on behalf of the respondent-State has also stated that the complaint before the *Lokayukt* pertains to some other issue and the petitioner is trying to confuse this Court by clubbing the same with the present case. Learned counsel has stated that based on the complaint made by the beneficiaries on the date of the inspection, the respondent



No. 7 has submitted his report to the SDO giving the factual aspect only. Learned counsel has further stated that the allegations made against the respondent No. 7 by the petitioner are made only to prejudice this Court and do not have any bearing on the present case. Learned counsel has therefore, prayed this Hon'ble Court to dismiss the present writ petition.

6. Admittedly, in the present case, the petitioner was issued a show cause notice on 10.04.2020 alleging that four persons have made complaints against him stating that they did not receive the grains for the month of March 2020. Even though the petitioner has submitted his explanation to the said show cause notice, the authority concerned did not consider the same on the ground that the petitioner did not adduce any evidence in support of his claim.

7. A perusal of the explanation submitted by the petitioner reveals that the said explanation was submitted during the Covid-19 Pandemic i.e., when the entire nation was under lockdown. The petitioner in his explanation has stated that due to the lockdown, the petitioner was not in a position to submit the requisite documents in support of his case and sought time for submitting the same subsequently. However, the authority without awaiting for the said documents has passed the order of



cancellation on 21.05.2020. Though the petitioner has preferred an appeal before the appellate authority immediately, the appellate authority has taken its own sweet time for passing the order impugned. It is to be noted that the petitioner has filed the sworn notarised affidavits of the three of the beneficiaries who are alleged to have made complaints against the petitioner however, the same were not considered by the appellate authority. But, on the other hand, the appellate authority has stated that no new evidence can be looked into by him. Further, the authority was of the opinion that the allegations made against the respondent No. 7 do not have any bearing on the case on hand and the plea of the petitioner that the report of the respondent No. 7 was biased was rejected.

8. Having regard to the fact that the three of the beneficiaries out of the four who are stated to have made allegations against the petitioner have submitted their sworn notarised affidavit stating that the petitioner was supplying the ration well within time and they do not have any complaints against him ought to have considered the said affidavits. That in so far as the remaining beneficiary was concerned, the fact that the said beneficiary has been taking ration from another shop has not been denied. Therefore, the allegation that the petitioner was not



supplying the grains to that particular beneficiary is also not correct. Further it is to be noted that when serious allegations are made against any officer, the higher officials should be cautious while relying on any report filed by them and should avoid passing orders solely based on the said reports. The authority in fairness should have called for another report from some other officer instead of relying on the report submitted by the respondent No. 7. The fact that the petitioner as well as the respondent No. 7 had some differences and complaints were made against the respondent No. 7 before the *Lokayukt* has not been denied and the same is substantiated by Annexure-1 which is a notice issued by the *Lokayukt* taking cognizance of the complaint made by the petitioner against the respondent No. 7. The non consideration of the explanation and also the sworn notarised affidavit of the beneficiaries by the appellate authority and relying on the enquiry report submitted by the respondent No. 7 have to be deprecated and the same are in violation of the principles of natural justice and equity.

9. Having regard to the above mentioned facts and circumstances, this Court is of the opinion that the orders which are impugned in the present writ petition i.e., the order of the appellate authority dated 20.05.2022 and also the order of



cancellation passed by the SDO East, Muzafarpur dated 21.05.2020 have been passed without any application of mind nor duly taking into consideration the explanation and the documents submitted by the petitioner. Therefore, both the orders are hereby set aside and the matter remanded back to the SDO East, Muzafarpur for passing orders afresh. The SDO shall consider the explanation and also the sworn affidavits filed by the petitioner and pass a reasoned order. It is needless to mention that before passing any order, the petitioner shall be given an opportunity of hearing.

10. Having regard to the fact that the license of the petitioner has been cancelled from the month of May of 2020, the SDO East, Muzafarpur shall complete the entire exercise as expeditiously as possible preferably within a period of six weeks from the date of receipt of a copy of this order.

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

(A. Abhishek Reddy, J)

Ayush/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.06.2024.
Transmission Date	NA

