

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16037 of 2022

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Umesh Paswan son of Bodhi Paswan, resident of Village- Chhapanna, Police
Station- Goshi, District- Jehanabad ... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Department of Food and Consumer Protection Department, Government of Bihar, Patna.
 2. The District Magistrate, Jehanabad.
 3. The Sub- Divisional Officer, cum Licensing Officer, Jehanabad.
 4. The Block Supply Officer, Goshi, Jehanabad. ... Respondents
- =====

Appearance :

For the Petitioner : Mr.Anand Kumar Ojha, Adv.
For the Respondents : Mr.S. Raza Ahmad (Aag5)

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

2 27-08-2024 Heard the parties.

2. The present writ petition has been filed for the
following relief(s) :

“..... for issuance of writ in the nature of certiorari to quash the order contained in Memo No. 57 dated 21.07.2017 issued by the Respondent No. 3, Sub Divisional Officer cum Licensing Authority, Jehanabad whereby and whereunder the Respondent No. 3 had cancelled the Public Distribution System license of the Petitioner without considering the reply of the petitioner as well as on the new & different allegations as mentioned in the Show Cause Notice and thus the action of Sub Divisional Officer cum Licensing Authority, Jehanabad is violative of Principle of natural justice as well as the judgment of this Hon'ble Court passed in C.W.J.C No. 13613/2021 (Manoj Kumar Vs the State of Bihar and others) by



which the Hon'ble Court held that the Licensing Authority cannot cancel the Public Distribution System License on the charges which was not the part of Show Cause Notice and the action of the Licensing Authority is also violative of law as the Hon'ble Court had already settled the law that on the basis of one day closure of Public Distribution System shop the Public Distribution System license cannot be cancelled ((Turant Lal Paswan vs. State of Bihar) reported in 2012 (3) PLJR 583) and the Petitioner further prays for quashing the order dated 09.07.2022 passed in Supply Appeal No. 69/2017 by the Appellate Authority cum District Magistrate, Jehanabad without considering that the Licensing Authority had not followed the Principle of Natural Justice and the Petitioner further prays for restoration of Public Distribution System license.”

3. Learned counsel for the petitioner has stated that the petitioner has been issued show cause notice vide Annexure 1 wherein initially six charges have been levelled against the petitioner. The petitioner has filed his explanation to the said show cause notice. However, the authority while passing the order of cancellation has given six more additional reasons which were not adverted to in the show cause notice. Learned counsel for the petitioner has stated that the passing of the order on other grounds which were not part of the original show cause notice is in violation of the principles of natural justice and



equity and contrary to the judgments of the Hon'ble Supreme Court passed in **M/s Oryx Fisheries Pvt. Ltd. Vrs. Union of India & Ors.** reported in **(2010) 13 SCC 427**. Learned counsel has stated that though the petitioner has raised the said violation in the grounds of appeal filed by him, the Appellate Authority has not considered the same and passed the order in a mechanical manner. Learned counsel has stated that once the original order is found to be bad, illegal and arbitrary and the appellate order shall also have to be set aside. Learned counsel has, therefore, prayed this Hon'ble Court to set aside the impugned order of cancellation as well as the appellate order and remand the matter back to the primary authority concerned for issuing a fresh show cause notice containing all the charges duly giving an opportunity of filing his explanation to the said show cause notice and, thereafter, pass a reasoned order.

4. Per contra the learned counsel appearing on behalf of the respondents has vehemently opposed the present Writ Petition and stated that the petitioner has an alternative and efficacious remedy for filing the revision against the order of cancellation and also the order of the appellate authority. Learned counsel has stated that though on the face of the orders, it appears that only six charges were levelled against the petitioner and six more were added in the order of cancellation, the additional grounds are nothing but elaborating of the



grounds mentioned in the show cause notice. Learned counsel has, therefore, prayed this Hon'ble Court to dismiss the present Writ Petition.

5. A perusal of the show cause notice (Annexure 1), reveals that the following charges were levelled against the petitioner :

1. निर्धारित कार्यावधि में दुकान बन्द रखना,
2. लाभुकों को कैशमेंमो नहीं देना,
3. अन्त्योदय एवं पी०एच०एच० खाद्यान्न योजना में प्रत्येक माह खाद्यान्न का वितरण नहीं करना,
4. खाद्यान्न एवं किरासन तेल योजना में लाभुकों को निर्धारित मात्रा से कम मात्रा में आपूर्ति करना तथा अधिक राशि की वसूली करना,
5. लाभुकों से अग्रिम माह का कूपन जबरण रख लेना,
6. कार्ड पर बगैर खाद्यान्न दिये अग्रिम रूप से प्रविष्टि कर देना,

While in the order of cancellation the authority has given six more additional reasons for cancelling the license of the petitioner. Admittedly the other six reasons were not there in the original show cause notice issued to the petitioner, the Hon'ble Supreme Court in **M/s Oryx Fisheries Pvt. Ltd. Vrs.**



Union of India & Ors. reported in **(2010) 13 SCC 427** has held as under :

“24. It is well settled that a quasi-judicial authority, while acting in exercise of its statutory power must act fairly and must act with an open mind while initiating a show-cause proceeding. A show-cause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice.

25. Expressions like “a reasonable opportunity of making objection” or “a reasonable opportunity of defence” have come up for consideration before this Court in the context of several statutes. A Constitution Bench of this Court in Khem Chand v. Union of India¹, of course in the context of service jurisprudence, reiterated certain principles which are applicable in the present case also.

26. S.R. Das, C.J. speaking for the unanimous Constitution Bench in Khem Chand held that the concept of “reasonable opportunity” includes various safeguards and one of them, in the words of the Ld.

Chief Justice, is: (AIR p. 307, para 19)

“(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;”



27. *It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage the authority issuing the charge-sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show-cause notice gets vitiated by unfairness and bias and the subsequent proceedings become an idle ceremony.*

28. *Justice is rooted in confidence and justice is the goal of a quasi-judicial proceeding also. If the functioning of a quasi-judicial authority has to inspire confidence in the minds of those subjected to its jurisdiction, such authority must act with utmost fairness. Its fairness is obviously to be manifested by the language in which charges are couched and conveyed to the person proceeded against.*

29. *In the instant case from the underlined portion of the show-cause notice it is clear that the third respondent has demonstrated a totally closed mind at the stage of show-cause notice itself. Such a closed mind is inconsistent with the scheme of Rule 43 which is set out below. The aforesaid Rule has been framed in exercise of the power conferred under Section 33 of the Marine Products Export Development Authority Act, 1972 and as such that Rule is statutory in nature.”*



6. Having regard to the above proposition of law as laid down by the Hon'ble Supreme Court in the above cited case and also the fact that the order of cancellation of the license contain additional charges which were not adverted to in the show cause notice and the petitioner was not given an opportunity to file his explanation for the additional charges the order has to be held as bad, illegal and in violation of principles of natural justice and equity and, therefore, liable to be set aside.

7. Once it is found that the original order of cancellation is bad and not in accordance with law the order passed by the Appellate Authority does not have any legs to stand on its own and the same has to be necessarily set aside.

8. Having regard to the above mentioned facts and circumstances, the impugned order of cancellation, dated 21.07.2017, passed by the Sub Divisional Officer as well as the order of the Appellate Authority, dated 09.07.2022, both are set aside. The matter is remanded back to the Sub Divisional Officer for issuing a fresh show cause notice containing all the charges/violations against the petitioner. The petitioner shall be given an opportunity of filing his explanation by giving sufficient time. After receipt of the explanation from the petitioner within the stipulated time the authority shall pass necessary orders giving the reasons for passing the said order.



9. It is needless to mention that before passing any order, 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. In case the authority is relying on any enquiry report the same shall be furnished to the petitioner. Any order passed shall be communicated to the parties.

10. With the above directions, the Writ Petition is disposed of.

(A. Abhishek Reddy , J)

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