

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.35 of 2022

Sridhar Poddar, Male, aged about 68 years, son of Ganesh Poddar Resident of Village- Pahlam, Ward No.- 12, under Gram Panchayat Ghordaur, Block-Banma Itahari, Sub- Division- Simri Bakhtiyarpur, District- Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Food and Civil Supply Department, Bihar, Patna.
2. The District Magistrate, Saharsa.
3. The Sub-Divisional Officer, Simri Bakhtiyarpur, District- Saharsa.
4. The Block Development Officer (B.D.O.)-cum- Block Supply Officer, Banma Itahari, District- Saharsa.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Shekhar Kumar Singh, Advocate.

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

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

9 12-03-2024 Heard the learned counsels for the parties.

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

“(i) For issuance of writ/writs, order /orders, direction/directions in the nature of certiorari seeking quashing of the order issued vide Memo No.1956-2/ dated 30.10.2021 issued by the Sub Divisional Officer, Simri Bakhtiyarpur, District- Saharsa, whereby and where under the licence of the petitioner for running a shop under Public Distribution System as a (P.D.S.) shop has been cancelled which is situated under Gram Panchayat, Ghordaur, under Block-Banma Itahari, Sub Division- Simri Bakhtiyarpur District-Saharsa.

(ii) For further prayed during the pendency of the writ petition the order impugned vide Annexure-5 issued by the Sub Divisional Officer, Simri Bakhtiyarpur, District- Saharsa through office order vide Memo No. 1956-2/ dated 30.10.2021 may kindly be stay till the disposal of the writ petition



and also allow the petitioner's P.D.S. licence to run the shop under the Public Distribution System.”

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 already filed an appeal and the same is pending. 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 dated 30.10.2021 in Memo No. 1956-2 passed by the Sub-Divisional Officer, Simri Bakhtiyarpur, District-Saharsa is 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.

(A. Abhishek Reddy , J)

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