

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17996 of 2022

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Kesh Nandan Paswan, aged about 50 years (Male) son of Babu Chand Paswan, resident of Village-Tarari, Police Station-Daudnagar, Dist.-Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Civil Supplies Department, Government of Bihar, Patna.
2. The Divisional Commissioner, Magadh Division, Gaya.
3. The District Magistrate, Aurangabad.
4. The District Supply Officer, Aurangabad.
5. The Sub-Divisional Officer, Tekari Daudnagar, Aurangabad.
6. The Block Supply Officer, Konch, Daudnagar, Aurangabad.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vishwa Ranjan Choudhary, Advocate.
For the Respondent/s : Mr. S. Raza Ahmad (AAG 5).

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

3 14-05-2024 Heard the learned counsels for the parties.

2. This writ petition has been filed for the following

relief(s):-

“(i)For issuance of a writ of certiorari for quashing/ set aside the order dated 18/08/2022 passed by learned court of Divisional Commissioner, Magadh Division, Gaya in Supply Revision no. 255/2021 (Annexure-7) as well as order dated 14/09/2021 passed by Id. District Magistrate cum collector Gaya in P.D.S Appeal Case no. 133/2020, (Annexure-6) Whereby, prayer of the petitioner for set aside order vide memo no 06 dt. 16/06/17 passed by the sub- division officer Daudnagar



Aurangabad where by the fair price dealer License no. 01/D/1995 of the further petitioner has been cancelled rejected without Considering the show cause filed the petition in arbitrary member.

(ii) For issuance of a writ of Certiorari for quashing of order vide Memo No. 06 dt. 16.06.2017 passed by the Sub Division Officer, Daudnagar Aurangabad whereby and where under the Fair Price Dealer License No.. 01/D/1995 of the petitioner has been cancelled on the basis of irregular distribution of commodities, without considering the clarification of the petitioner and by ignoring the material available on record.

(iii) For issuance of a writ of mandamus for direction to the respondents to reinstate/restore the Fair Price Dealer License NO.01/D/1995 of the petitioner by considering innocence of the petitioner and mala fide intention of the respondents authorities.”

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 exhausted all the remedies and all the authorities have found that the petitioner has violated the provisions of the Control Order, 2016. 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 licensee 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 be held as bad, illegal, contrary to the provisions of Rule 27(ii) of the Control Order and has to be 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 16.06.2017 passed by the Sub-Divisional Officer, Daudnagar Aurangabad, order dated 14.09.2021 passed by the District Magistrate-cum-Collector, Gaya and the order dated 18.08.2022 passed by the Divisional Commissioner, Magadh Division, Gaya are 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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