

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16340 of 2023

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Shamsad Alam son of Late Ayub Alam @ Late Ayub, Resident of Jhauwari,
P.S.-Jalalgarh, District-Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Patna.
2. The Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Patna.
3. The Divisional Commissioner Purnea Division, Purnea.
4. The District Collector, Purnea.
5. The Sub-Divisional Officer-cum-Licensing Authority, Baisi, Purnea.
6. The Senior Deputy Collector, Baisi, Purnea.
7. The Block Supply Officer, Amour, Purnea.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. N.K. Agrawal, Sr. Advocate
	:	Mr. Md. Fazle Karim, Advocate
	:	Ms. Diksha Kumar, Adv.
For the Respondent/s	:	Mr. S. Raza Ahmad (Aag 5)

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

2 05-10-2024 Heard the learned counsels for the parties.

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

“i. For quashing the order passed by the Sub-Divisional Officer, Baisi (herein after to be referred on the S.D.O) dated 28.10.2020 whereby and where under on wrong assumption of facts and law he has cancelled the license of Public Distribution shop (in short P.D.S) license no. 64 of 2016 in respect to the petitioner.

ii. For quashing the order dated 15.03.2022 passed by the District Collector, Purnea passed in Supply Appeal No. 277 of 2021 where on wrong assumption of facts and law the District Collector, Purnea held that the



order dated 28.10.2020 passed by S.D.O, Baisi does not require any interference and upheld the order of the S.D.O, Baisi, and rejected the appeal filed by the petitioner.

iii. For quashing of the order dated 15.11.2022, passed in Supply Revision No. 155 of 2022, passed by the Divisional Commissioner, Purnea Division, Purnea whereby the Divisional Commission held that the orders of the court below do not require any interference and upheld the orders of the court below and rejected the Revision petition of the petitioner.

iv. For commanding the respondents to restore the P.D.S license no. 64 of 2016 of the petitioner and allow him to continue with the P.D.S as before.

v. For holding that the respondents S.D.O, the District Collector and the Divisional Commissioner arrived at a conclusion wrongly without considering the material facts and presuming something to the prejudice to the petitioner thus the impugned orders are illegal, arbitrary and not sustainable in the eyes of law.

vi. For restraining the respondents from issuing any fresh license for the area in respect to which the petitioner was granted P.D.S license no. 64 of 2016 during pendency of this application.

vii. For any other appropriate relief or reliefs may be granted in favor of the petitioner as your lordship may deem fit and proper.”

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 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 passed by the Revisional Authority dated 15.11.2022, the order passed by the Appellate Authority dated 15.03.2022, as well as the order passed by the Sub-Divisional Officer, Baisi dated 28.10.2020 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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