

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15855 of 2023

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Bhola Ray, Son of Parsuram Ray, Resident of Village- diwari, Matauna, P.S.-
Sursand, P.O.- Divari Matauna, District- Sitamarhi, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal secretary, Food and Consumer Protection Department, Government of Bihar, Patna.
2. The Sub Divisional Officer, Pupri, Sitamarhi.
3. The Block Supply Officer, Sursand.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. N. K. Agrawal, Sr. Adv. Mr. D. N. Tiwary, Adv. Mr. Kumar Rajdeep, Adv. Ms. Diksha Kumari, Adv Mr. Arvind Kumar, Adv.
For the Respondent/s	:	Mr. Arvind Ujjwal (Sc 4) Mr. U.P. Singh, AC to SC 4

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

2 07-02-2024 Heard the learned counsel for the parties.

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

- “i. for quashing the order dated 10.04.2023 passed by the SDO, Pupri exercising powers under clause 28 of the Bihar Targeted P.D.S. (Control) Order, 2016 whereby and where under the Public Distribution License of the Petitioner bearing License No.33/1997 has been cancelled on totally non-est and erroneous grounds in completely mechanical manner-without even considering the reply of the Petitioner.
- ii. For holding and declaring the Order dated 10.04.2023 passed by the SDO, Pupri, Sitamarhi is liable to be set- aside as same has



been passed in violation of principles of Natural justice, in as much as the Impugned Order has been passed without considering the facts and circumstances of the case.

iii. For that in any view of the matter, the order of cancellation exercising the power under clause 28 of the Bihar Targeted P.D.S. (Control) Order, 2016 is also not legal & valid because the petitioner neither went to jail nor was the fugitive.”

3. Learned counsel appearing on behalf of the petitioner has stated that shop of the petitioner was inspected on 30.11.2022 at 5 P.M. and thereafter, petitioner was issued show cause notice but the petitioner could not file his explanation to the said show cause notice. Learned counsel has stated that as per Rule 25(i)(a) of the Control Order, 2016, the licensee is obligated to keep the shop open throughout the month during the stipulated period and as per Rule 15 of the Control Order, 2016, the shop should be kept open from 07.00 a.m. to 01.00 p.m. from March till August and from 08.00 a.m. to 02.00 p.m. from September to February. Learned counsel has stated that the authority concerned has inspected the shop on 30.11.2022 at 5 P.M and having found the shop closed has issued the show cause notice and cancelled the licence of the petitioner and the same is totally against the provisions of the Control Order, 2016. Learned counsel has stated that as per Rule 15 of the Control



Order, 2016, the petitioner is obligated to keep the shop open from 08.00 a.m. to 02.00 p.m. in the month of September to February, whereas the inspection took place on 30.11.2022 at 5 p.m. That the shop of the petitioner was closed after the stipulated time at 02.00 p.m. and the petitioner cannot be blamed for the same. Learned counsel has prayed this Hon'ble Court to allow the present Writ Petition by setting aside the impugned order.

4. Learned counsel has stated that even if the petitioner has not filed his explanation to the show cause notice, the authority was obligated to pass a reasoned order giving reasons in the impugned order. Merely, because the petitioner has not filed his explanation to the said show cause notice the same cannot be a ground to cancel the licence. Learned counsel has relied on the Judgment of this Hon'ble Court dated 16.10.2023 passed in CWJC No. 10555 of 2023 to buttress his contentions.

5. Per contra, the learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the present Writ Petition and stated that in spite of receipt of the show cause notice the petitioner has not filed his explanation. Therefore, the authority concerned duly



taking into consideration the said fact has passed the impugned order. Learned counsel has therefore, prayed this Court to dismiss the present Writ Petition.

6. A perusal of the impugned order shows that the cancellation of licence of the petitioner is on two grounds. Firstly that the shop of the petitioner was closed at 5 P.M. and secondly, that the petitioner did not file his explanation to the show cause notice.

7. In order to resolve the issue in the present Writ Petition it is necessary to extract the provisions of the Act of the Bihar Targeted Public Distribution System (Control) Order, 2016, i.e., more particularly Rules 15 and 25(i)(a) of the Control Order, which are stated as follows :

“15 : Working and Leave :-- (i) A shop of public distribution system shall be kept open every day in a week from 7.00 am to 1.00 pm from March to August and from 8.00 am to 2.00 pm from September to February.

(ii) If a fair price shop owner is unable to operate the shop due to unavoidable reasons for a limited period, he shall submit an application to the licensing authority. The licensing authority may give him permission to go in leave after making optional arrangement for supply of essential commodities to the consumers related to his shop. The maximum period of leave shall be of 90 days at a time.”

“25. Action against a licensee. - (i) In



view of the order passed by the Hon'ble Supreme Court in Civil Writ 196/01, action shall be taken against the licensees in the following circumstances :-

Licensees who,

(a) do not keep their shops open throughout the month during the stipulated period;

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8. Admittedly, in the present case the inspection of the shop has taken place on 30.11.2022 at 5 P.M, i.e., after the stipulated time. There is no legal obligation on the petitioner to keep the shop open after the stipulated time, i.e, after 2.00 p.m. and such it cannot be said that the petitioner has violated the provisions of the control order. Therefore, the impugned action of the respondents is cancelling the licence of the petitioner on the above stated ground has to be necessarily set aside. Insofar as the other ground for cancelling the licence is concerned, it is stated that that the petitioner has not submitted his explanation to the show cause notice and therefore the order was passed. This Hon'ble Court in CWJC No. 10555 of 2023 has held that merely because the show cause notice is not filed, the authorities cannot straightway pass the impugned order of cancellation of licence. Even where no explanation is filed the authority is obligated to pass a reasoned order.



9. Having regard to the above, the impugned order dated 10.04.2023 is set aside and the matter remanded back to the Sub-Divisional Officer for passing orders afresh giving reasons and in accordance with law. The authority shall give an opportunity to the petitioner to file his explanation and on receipt of the said explanation pass a reasoned order duly taking into consideration the provision of the Bihar Targeted Public Distribution System (Control) Order, 2016, more particularly Rules 15 and 25(i)(a).

10. 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 possibly preferably within a period of eight weeks from the date of receipt of the copy of this order. Any order passed shall be communicated to the petitioner.

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

(A. Abhishek Reddy , J)

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