

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16656 of 2023

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Birendra Kumar Son of late Bhikhari Yadav, resident of
Village/Post/Panchayat - Paura, P.S./Prakhand/District- Nawada
... Petitioner

Versus

1. The State of Bihar Through the Principal Secretary, Food and Consumer Protection Dept., Govt. of Bihar, Old Secretariat, Patna 800015.
 2. The Divisional Commissioner, Magadh Division, Gaya.
 3. The District Magistrate, Nawada.
 4. The Addl. Collector-cum-Addl. District Magistrate, Nawada.
 5. The Sub Divisional Officer, Nawada Sadar, District- Nawada.
 6. The Block Supply Officer, Nawada Sadar, Nawada. ... Respondents
- =====

Appearance :

For the Petitioner : Mr.Kumar Lalit, Adv.
For the Respondents : Mr.Uday Prasad, AC to GP XXII

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

2 05-09-2024 Heard the parties.

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

i. For quashing of Memo no. 363 dated 28-08-2022, contained in ANN-P/3, issued by the Sub Divisional Officer, Nawada Sadar (For Short: the SDO) cancelling petitioner's License No. 34/07, which was issued for running a PDS Shop/Fair Price Shop.

ii. Further, for quashing of Appellate Order, Contained in ANN-P/4, issued under Memo no. 11 dated 03-02-2023, passed in Case No.34/2022 by the Addl. District Magistrate, Nawada dismissing appeal filed against SDM's Order/ANN-3.

iii. For a consequential direction commanding the



respondents to restore the supply and distribution of petitioner's PDS/Fair Price Shop forthwith, the same being his source of livelihood which has been snatched illegally, unconstitutionally & in complete violation of Natural Justice.

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 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 Additional District Magistrate, Nawada, vide Memo No. 11, dated 03.02.2023, as well as the order of the Sub-Divisional Officer, Nawada, vide Memo No. 363, dated 28.28.2022 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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