

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18071 of 2023

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Rameshwar Prasad Son of Yamuna Prasad, Resident of Salapatganj, Gudri Bazar, P.S.- Bhagwan Bazar, District- Saran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection Department, Old Secretariat, Patna.
2. The District Magistrate- cum- Collector, Saran at Chapra.
3. The Sub-Divisional Officer, Sadar Chapra, District Saran.
4. The Marketing Officer, Sadar Chapra, District Saran.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar Verma, Adv.
	:	Mr. Ajit Kumar Singh, Adv.
	:	Mr. Abhishek Kumar, Adv.
For the Respondent/s	:	Mr. Raghwanand, Government Advocate (11)
	:	Mr. Rajnish Shandilya, AC to GA11

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

2 26-10-2024 Heard the learned counsels for the parties.

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

“1. That this is an application praying for issuance of writ in the nature of Certiorari or any other appropriate writ, order or direction for quashing the order dated 7.2.2023 passed by the District Magistrate, Saran, Chapra, whereby and whereunder the learned District Magistrate was pleased to reject the appeal filed by the petitioner and affirmed the order passed by the Sub-Divisional Officer-cum-Licensing Authority, Sadar, Chapra contained in Memo No. 1306 dated 2.3.2020 canceling the P.D.S. Shop License No. 48/2016 of the petitioner without considering the show cause filed by the petitioner and so for quashment of the order dated 22.1.2020 passed by the Sub-Divisional officer, Sadar Chapra-cum-Licensing Authority cancelling the license of the petitioner on alien consideration contrary to the materials on record, inter alia, the following



reliefs:-

(i) The respondents be directed to restore the license of the petitioner after quashment of the cancellation order in restoring the status as before the order of cancellation.

(ii) The respondents' impugned act of cancelling the license of the petitioner before issuance of the show cause notice to the petitioner and reply filed by him be deprecated and in considering the order as illegal and against the principle of natural justice, the same be quashed.

(iii) The respondents be directed to grant all the consequential benefits to the petitioner for which he is legally entitled to in the facts and circumstances of the case for the ends of justice.

(iv) Any other relief or reliefs be granted to the petitioner to which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

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 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 passed by the Appellate Authority dated 07.02.2023, as well as the order passed by the Sub-Divisional Officer, Sadar, Chapra dated 02.03.2020 & 22.01.2020 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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