

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18062 of 2023

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Ramjee Prasad S/o Kuldip Paswan Resident of Village-Vishrampur, Police
Station-Mali, Block Navinagar, District-Aurangabad (Bihar)
... Petitioner

Versus

1. The State of Bihar through its Secretary, Food and Consumer Protection
Department, Old Secretariat, Patna.
2. The Divisional Commissioner Gaya, Distt-Gaya.
3. The Collector Cum District Magistrate Aurangabad, Distt-Aurangabad.
4. The District Supply Officer Aurangabad, Distt.-Aurangabad.
5. The Sub Divisional Officer Aurangabad, Distt-Aurangabad.
6. The Additional Sub Divisional Officer Aurangabad, Distt-Aurangabad.
7. The Block Supply Officer Kutumba, Distt-Aurangabad.
8. The Block Supply Officer Baarun, Distt-Aurangabad. ... Respondents

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Appearance :

For the Petitioner : Mr.Pintu Kumar Patel, Adv.
For the Respondents : Mr. Md. Irshad, AC to SC I

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

2 02-09-2024 Heard the parties.

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

*(1) For issuance of appropriate writ/writs,
order/orders, direction in the nature of certiorari
quashing the order dated 21.09.2023 passed in PDS
Revision Case No. 81/2023 passed by the Learned
Commissioner, Magadh Division, Gaya whereby and
where under he has dismissed the revision petition
and confirmed the order dated 05.04.2023 passed by
the Learned District Magistrate Cum Collector, Gaya
by which the statutory appeal was dismissed.*



(II) Further for quashing the order dated 05.04.2022 passed in PDS appeal Case No. 21/2022 passed by the District Magistrate, Gaya whereby and where under he has confirmed the order passed by the Learned S.D.O.- cum Licensing Authority, Aurangabad, Aurangabad in Supply Misc Case No. 3/Navinagar/2021 dated 31.03.2022.

(III) Further for quashing the order passed in Supply Misc. Case No. 03/Navinagar/2021 dated 31.03.2022 by the Learned S.D.O. Aurangabad-cum Licensing Authority, by which the PDS license of the petitioner bearing License No. 01/N/98 has been cancelled.

(IV) Further for direction to the respondents to restore the license and also to restore the supply to the Fair Price shop of the petitioner under Public Distribution system bearing License no. 01/N/98.

(V) Further for issuance appropriate writ/order/direction in which the petitioner found to be entitled in the facts and circumstances of the case.

3. Learned counsel appearing on behalf of the petitioner has stated that the Sub-Divisional Officer while issuing the show cause notice to the petitioner has not enclosed the enquiry report.

4. Further learned counsel has relied on the judgment



of this Hon'ble Court in CWJC No.253 of 2014 dated 11.03.2015 wherein this Hon'ble Court has held that the non-supply of the enquiry report along with the show-cause is bad and against the principle of natural justice and equity.

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 furnishing a copy of the enquiry report and any other material that they seek to rely on and give an opportunity of filing his explanation 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 all the authorities have found that the petitioner has violated the provisions of the Bihar Targeted Public Distribution System (Control) Order, 2016. Learned counsel has therefore prayed this Hon'ble Court to dismiss the present writ petition.

7. This Court in CWJC No.253 of 2014 dated 11.03.2015 held as under:

"In my opinion, irregularities in maintenance of notice board or maintenance of the stocks within the



premises of the petitioner are too trivial and cannot form a basis for cancellation of licence. No doubt there were other serious charges against the petitioner regarding non-issuance of cash-memo to the consumers, distribution of lesser amount of kerosene oil and non-distribution of food- grains but surprisingly even while making such allegations, the names of such consumers who are dissatisfied by such action of the petitioner are conspicuously missing. The allegations are sweeping in nature without reference to any specific consumer.

In my opinion the non-supply of the enquiry report conducted by the District Level Committee which is the foundation for issuance of show cause notice placed at Annexure-1 as well as non-supply of names of such of the consumers who had complained against the petitioner as regarding the irregularities in distribution of the food-grains or the kerosene oil has prejudiced the petitioner to file his purposeful reply and in absence thereof, the order impugned in my opinion, are based on no materials.

Though it was strenuously argued by Mr. Pandey that in absence of any response by the petitioner the allegations would be deemed to have been admitted but in my opinion even if the show cause reply was missing, the orders passed by the statutory authorities having civil consequences and resulting in cancellation should reflect application of mind.



Unfortunately it is grossly missing inasmuch as neither the order of the Licensing Authority nor the order of the appellate authority deal with the materials which formed the basis to drive home the charges. The orders impugned are indefensible and cannot be upheld."

8. A perusal of the show-cause notice issued to the petitioner does not reveal that the copy of the enquiry report was enclosed along with the show-cause notice.

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 revisional order, dated 21.09.2023, passed in Revision Case No. 81 of 20223 by the Commissioner, Magadh Division, Gaya, the appellate order, dated 05.04.2023, passed in PDS Appeal Case No. 21 of 2022 by the District Magistrate, Gaya, as well as the order, dated 31.03.2022, passed in Supply Misc. Case No. 3/Navinagar/2021 by the Sub-Divisional Officer-cum-Licensing authority, Aurangabad, are set aside. The matter is remanded back to the Sub-divisional Officer (Respondent No. 5) for furnishing a copy of the enquiry report and any other material relied on the petitioner and call for his explanation by giving 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 order, 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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