

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9568 of 2024

=====

Chait Ram S/o of Indradeo Paswan @ Indradeo Ram Resident of Village and Post -Sinha Ghat, Gram Panchayat - Sinha, Block- Barhara, P.S.- Krishnagarh (Sinha O.P), Dist.- Bhojpur (Arrah).

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Food and Consumer Protection Department, Govt. of Bihar, Patna.
2. The Commissioner, Patna Division, Patna.
3. The District Magistrate, Bhojpur at Arrah.
4. The S.D.O Sadar Arrah.
5. The Assistant District Supply officer, Sadar Arrah.
6. The Block Supply Officer, Barhara, Arrah.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Vijay Anand
For the Respondent/s : Mr.Addl. Advocate General (7)

=====

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

7 29-01-2025 Heard the parties.

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

“(I) 04.04.2024 passed by Divisional Commissioner, Patna in BTPDS Control revision No. 104/2022 whereby and whereunder the Revision preferred by the petitioner against the order of Collector dated 22.2.2022 in appeal No. 02/2022 was dismissed on the ground that the petitioner has failed to brought any new



facts/evidence which disclosed that the order of the Collector, Bhojpur is wrong.

(ii) Order dated 22.2.2022 passed by the District Magistrate, Bhojpur at Arrah in Appeal Case No. 02/2022 whereby and whereunder the supply appeal preferred by the petitioner was dismissed and affirming the order of S.D.O, Bhojpur at Arrah dated 3.2.2021 holding therein that the appellant has failed to produce any substantial evidence and further the show cause filed by the petitioner is not satisfactory.

(iii) Pass the order in the nature of mandamus commanding the Respondents especially Respondent No.4 to restore the allotment of the petitioner.”

3. It is the case of the petitioner that the Block Development Officer has inspected the PDS shop of the petitioner on 07.09.2020 at 2.10 P.M.

4. Learned counsel for the petitioner has stated that the inspection of the shop after closing hours ie., 2.00 P.M is totally illegal and bad and therefore, same cannot be the basis for issuing the show cause notice or canceling the license of the



petitioner. Further, learned counsel has stated that though the petitioner has submitted a detailed explanation, the SDO instead of passing the order on merits duly taking into consideration the explanation submitted by the petitioner has send the show cause to the ADSO, Arrah and obtained his opinion which is contrary to the provisions of the Act. Further, the SDO has passed the order vide memo No. 146 dated 03.02.2021 whereby it has been observed that ADSO has has not found the show cause filed by the petitioner satisfactory and accordingly, he recommended to cancel the licnese of the petitioner. After that the petitioner had approached this Hon'ble Court in C.W.J.C No. 7323 of 2021 which was disposed of by the Division Bench of this Hon'ble Court with liberty to the petitioner to approach the District Magistrate within two weeks. Thereafter, the petitioner had filed Supply Appeal No. 02 of 2022 which was dismissed by the District Magistrate vide order dated 22.02.2022.

5. Learned counsel has submitted that as per Rule 15 of the Control Order, 2016 the petitioner is obliged to keep the shop open from 08.00 am to 02.00 pm and the shop of the petitioner was closed after the stipulated time at 02.00 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.

6. Per contra learned counsel appearing on behalf of the respondents has vehemently opposed the maintainability of the present writ petition and stated that the authority concerned duly taking into consideration the allegations against the petitioner has inspected the PDS shop of the petitioner and therefore, issued show cause. The authority has found the allegation against the petitioner serious in nature and having found the explanation of the petitioner not satisfactory, canceled the license of the petitioner. Learned counsel has therefore, prayed this Court to dismiss the present writ petition.

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 Writ196/01, 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;

8. Admittedly, in the present case the inspection of the shop has taken place on 07.09.2020 at 02.10 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, ie., after 2.00 pm and as such it cannot be said that the petitioner has violated the provisions of the control order. Therefore, the impugned action of the respondents canceling the license of the petitioner on the above stated ground has to be necessarily set aside.

9. Further as pointed by the petitioner the authority has relied on the opinion given by the ADSO for passing the order of cancellation. The SDO having received the explanation from the petitioner, ought to have applied his mind and passed a reasoned order. Reliance on the opinion of ADSO, for passing the order cannot be countenanced and amounts to abdication of



duties by the SDO. Further it is to be noted that the statements made by the complainant-beneficiaries have not been furnished to the petitioner. On this ground also the impugned order is liable to be set aside.

10. Having regard to the above mentioned facts and circumstances the order dated 04.04.2024 passed by Divisional Commissioner, Patna in BTPDS Control revision No. 104/2022, the order of the Collector dated 22.2.2022 in appeal No. 02/2022 and the order of the S.D.O, Bhojpur at Arrah dated 3.2.2021, impugned in this CWJC are hereby set aside. The PDS license of the petitioner is restored. The authorities are directed to restore the supply of grains to the petitioner at the earliest.

(A. Abhishek Reddy , J)

Prakash/-

U			
---	--	--	--

