

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16950 of 2023

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Krishnadev Choudhary son of Mukund Choudhary, Resident of village-
Phaga, P.S.- Bandhwa Korawa, District- Banka.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection Department, Old Secretariat, Patna.
2. The Divisional Commissioner, Bhagalpur.
3. The District Magistrate, Banka.
4. The Sub Divisional Officer, Banka, District- Banka.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pramod Mishra, Adv.
For the Respondent/s : Mr. Arvind Ujjwal (Sc 4)

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

3 02-04-2025 Heard the learned counsels for the parties.

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

*“(i) To issue a writ of certiorari, for setting
aside the order dated 05.09.2023 passed by the
Divisional Commissioner, Bhagalpur (the appellate
authority) in Supply Revision Case No. 03/2023-24,
whereby and where-under the Supply Revision case
preferred by the petitioner before the appellate
authority, in pursuant to order dated 07.07.2022
passed by this Hon’ble Court in C.W.J.C.
No.8425/2020, has illegally been rejected, affirming
the order dated 27.02.2023 passed by the District
Magistrate, banka in Supply Appeal No. 18/2022-23
who was pleased to affirm the order passed by the Sub-
Divisional Officer, Banka contained in Memo No. 18*



dated 05.05.2020 cancelling the P.D.S. license of the petitioner.

ii) To issue a writ of certiorari, setting aside the order dated 27.02.2023 passed by the District Magistrate, Banka in Supply Appeal No.18/2022-23.

Iii) As also to quash/set-aside the order passed by the Sub-Divisional Officer, Banka and issued vide memo No.18 dated 05.05.2020 whereby and whereunder license of the petitioner's fair price shop bearing no. 32/16, has illegally been cancelled with immediate effect contained.

iv) to issue a writ of mandamus, commanding and directing the Respondents to restore the petitioner's license as before and to make allotment for the petitioner's shop."

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 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 Sub-Divisional Officer, Banka dated 05.05.2020 and the impugned order dated 27.02.2023 passed by the appellate authority and the impugned order dated 05.09.2023 passed by the revisional authority 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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