

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13766 of 2023

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Dilip Paswan, Son of Shyam Lal Paswan, Resident of Village- Manpur, P.S. - Fatehpur, District - Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through The Principal Secretary, Department of Food and Public Distribution, Government of Bihar, Patna.
2. The Principal Secretary, Department of Food and Public Distribution, , Government of Bihar, Patna.
3. The Commissioner, Magadh Division, Gaya.
4. The District Magistrate, Gaya.
5. The Additional Collector cum Additional District Magistrate, Gaya.
6. The Sub Divisional Officer, Sadar, Gaya.
7. The Block Development Officer, Amas, Gaya.
8. The Block Development Officer, Tankuppa, Gaya.
9. The The Block Development Officer, Fatehpur, Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Ms.Sushmita Mishra, Adv.
For the Respondent/s : Mr.S. Raza Ahmad (AAG 5)

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

11 09-02-2026 Heard learned counsel for the parties.

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

“(i) For the issuance of a Rule in the nature of writ of certiorari for quashing the order dated 31-03-2023 passed by Respondent No.5, The Additional Collector cum Additional District Magistrate, Gaya whereby and whereunder the P.D.S. Appeal No. 01/18 preferred by the petitioner against the order dated 10-11-2017 passed by Respondent No.6, The Sub Divisional Officer, Sadar, Gaya, whereby whereunder the



P.D.S. Licence bearing 01/90 has been cancelled has been dismissed and the order dated 10-11-2017 passed by Respondent No. 6 has been affirmed.

(ii) For the issuance of a Rule in the nature of writ of certiorari for quashing the order dated 10-11-2017 passed by Respondent No.6, The Sub Divisional Officer, Sadar, Gaya, whereby and whereunder the P.D.S. Licence bearing 01/90 has been cancelled without issuance of any show cause notice for proposed cancellation of his license on the basis of an inspection conducted on 15-10-2017 and further, it has been passed on the direction of the District Magistrate, Gaya who himself is the Appellate authority.

(iii) For the issuance of a Rule in the nature of writ of Mandamus to follow the provisions of Bihar Targetted Public Distribution System (Control) Order, 2016 (In short- Control Order, 2016) in a just and proper manner.”

3. Learned counsel appearing on behalf of the petitioner submits that the petitioner is the PDS dealer who has been granted the license in the year 1990 and he has been functioning without complaint from any beneficiaries attached to his shop. Learned counsel submits that on earlier occasion, the respondents have inspected the shop of the petitioner on 05.05.2027 and 08.06.2017, thereafter, the Sub-Divisional Officer has issued show cause notices to the petitioner vide Letter No. 150/Aa dated 06.05.2017 and Letter No. 563/Aa dated 11.06.2017 respectively (Annexure A and B of the



supplementary counter affidavit). Learned counsel submits that after issuance of the above two show cause notices the authority did not take any action and it was presumed that they have dropped the proceedings. Thereafter the authority again inspected the shop of the petitioner on 15.10.2017, however no show cause notice was issued to the petitioner after the 3rd inspection dated 15.10.2017 and straightaway the impugned order of cancellation was passed on 10.11.2017 vide Memo No. 740/Go(Aa) (Annexure P/2). Learned counsel submits that the authority after a fresh inspection without serving any show cause notice or granting an opportunity to the petitioner to file his reply, the license of the petitioner has been cancelled at the behest of the District Magistrate. Learned counsel has drawn the attention of the Court to the relevant paragraph of the impugned order passed by the Sub-Divisional Officer wherein the authority has stated that the order of cancellation is passed as per the instructions of the District Magistrate and taking into consideration the earlier show cause notices issued to the petitioner. Learned counsel submits that after the cancellation of the license by the Sub-Divisional Officer the petitioner had preferred statutory appeal before the District Magistrate but the same was also dismissed vide order dated 31.03.2023



(Annexure P/1). Learned counsel therefore submits that the impugned order passed by the Sub-Divisional Officer is illegal, bad, arbitrary and contrary to the principles of natural Justice and equity and therefore prayed this Hon'ble Court to set aside the impugned orders passed by the Sub-Divisional Officer as well as the appellate authority and remand the matter back to the original authority for issuing fresh show cause notice to the petitioner duly enclosing the copy of the enquiry report pursuant to the inspection done on 15.10.2017, the statements of any beneficiaries, grant an opportunity to the petitioner to file his explanation and thereafter pass a reasoned order.

4. Per contra, the learned counsel appearing on behalf of the respondent-State has vehemently opposed the very maintainability of the present writ petition. Learned counsel submits that the present writ petition is devoid of merits and this Court under Article 226 of the Constitution of India has to dismiss the present writ petition filed by the petitioner solely on the ground that the petitioner is having an alternative and effective remedy of filing a statutory revision. Further learned counsel submits that the earlier notices issued to the petitioner remained unsubstantiated as the petitioner did not file any explanation to the said show cause notices. That the authority



duly taking into note of the fact that the petitioner did not file his explanation to the earlier two show cause notices, has passed the impugned order of cancellation. Further it is stated that the order passed by the Sub-Divisional officer does not suffer from any infirmity and the same is in accordance with law. Even the appeal filed by the petitioner was dismissed by the appellate authority. Learned counsel has therefore prayed this Hon'ble Court to dismiss the present writ petition.

5. A perusal of the impugned order passed by the Sub-Divisional Officer dated 10.11.2017 reveals that the authority while passing the impugned order has taken into consideration the fact that the petitioner did not file his explanation to the earlier two show cause notices issued in the month of May and June, 2017 and further stated that he is passing the orders on the instructions of the District Magistrate. Further it is to be noted that after the 3rd inspection done on 15.10.2017, neither any show cause notice was served on the petitioner nor the copy of the enquiry report was furnished to the petitioner. This Court is of the opinion that the original authority ought to have passed the orders on merits irrespective of the fact as to whether the petitioner has filed his explanation to the show cause notice or not. The authority ought to have passed the orders on merits by



passing a reasoned order and not acted at the behest of the District Magistrate. On this ground alone the impugned orders are liable to be set aside.

6. Having regard to the above, the impugned order dated 10.11.2017 passed by the Sub-Divisional Officer as well as the order dated 31.03.2023 passed by the Appellate Authority are both set aside. The matter is remanded back to the Sub-divisional Officer (Respondent No. 6) for issuing a fresh show-cause notice to the petitioner duly enclosing the copy of the enquiry report/s pursuant to the inspection done on 15.10.2017 and also the statements of beneficiaries if any. The authority shall grant sufficient opportunity to the petitioner to file his explanation preferably minimum period of 10 days. After receipt of the explanation from the petitioner, the authority is directed to pass a reasoned order giving reasons either for accepting the explanation or rejecting the same. In case the petitioner does not file his explanation even after receipt of the show cause notice, even there also the authority is obligated to pass a reasoned order.

7. It is needless to mention that before passing any orders, the petitioner shall be given an opportunity of hearing. The authority shall endeavor to complete the entire exercise as



expeditiously as possible preferably within a period of 12 weeks from the date of receipt of a copy of this order. Any order passed shall be communicated to the petitioner.

8. With the above directions, the present writ petition stands disposed of.

(A. Abhishek Reddy , J)

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