

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9309 of 2020

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ARUN SINGH ALIAS ARUN KUMAR SINGH, Son of Late Jagdish Prasad Singh, resident of Village- Mahesia, P.O.- Pattisital, P.S.- Derni, District- Saran (Chapra)

... .. Petitioner

Versus

1. The State of Bihar through its Additional Chief Secretary, Department of Food and Civil Supply, Government of Bihar, Patna
2. The Commissioner, Saran Division, Chapra
3. The District Magistrate, Saran (Chapra)
4. The Sub-Divisional Officer, Sonapur, Saran (Chapra)
5. The Supply Inspector-cum-Supply Officer, Dariyapur, Saran (Chapra)
6. The Executive Officer, Dighwara, Saran (Chapra)

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Anand Kumar Ojha Mr. Ram Kishore Singh
For the Respondent/s	:	Mr. Gyan Shankar, AC to GP 2

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER

C.A.V.

Date : 31-01-2022

The present writ application has been filed for quashing the order, dated 30.11.2017, issued under Memo No. 1220 (Annexure-3), by which the Sub Divisional Officer, Sonapur, Saran-the Licensing Authority has cancelled the PDS license of the petitioner for running a fair price shop allotted under the provisions of the Bihar Targeted Public Distribution System (Control) Order, 2016 (hereinafter referred to as 'the 2016 Order') and further for quashing the order, dated 22.10.2018, passed by the



District Magistrate, Saran, Chapra, in Supply Appeal No. 80 of 2017, by which the Appellate Authority has upheld the order of the Licensing Authority and also for quashing of the order, dated 11.11.2019, passed by the Commissioner, Saran Division, in Supply Revision No. 29 of 2019, whereby the Revisional Authority has rejected the revision application preferred by the petitioner.

2. The brief facts, giving rise to the present writ application, is that the petitioner was granted license, vide License No. 86 of 2016, under Jitwarpur Gram Panchayat to run a fair price shop under the Public Distribution System. On 12.10.2017, the fair price shop of the petitioner was inspected by Inspection Team, which led to the issuance of show cause, dated 15.10.2017, issued by the Sub Divisional Officer, Sonapur, Saran, which was served upon the petitioner containing following irregularities/allegations, requiring the petitioner to submit his reply within a fortnight.

- (I) List of beneficiaries was not displayed
- (ii) Sample food grains were not displayed.
- (iii) Weight and Measure License was not displayed
- (iv) Kerosene oil meant for the Sept. 2017 was being belatedly distributed in Oct. 2017



(v) Dealer was not distributing the food grains/Kerosene oil each month and every month.

3. The petitioner, in pursuance thereof, submitted reply to the show cause, stating therein that the Weight and measure License was renewed till October, 2018 and further stated that the list of beneficiaries and the sample food grains were on display in his shop. The petitioner further took the defence that due to Chhath festival, the food grain was being distributed first, and then, kerosene oil was distributed and the distribution was being done under the supervision of Panchayat Level Vigilance Committee and stated that he always distributed prescribed quantity of food grains and kerosene oil at the prescribed rate and made entries into distribution register. The petitioner produced the photocopy of the distribution register and also produced statements, on affidavits, of some of the beneficiaries, who denied of any complaints being made against the petitioner during the course of enquiry.

4. On the other hand, the State filed a counter affidavit, stating therein that the fair price shop of the petitioner was inspected by a joint team of Supply Inspector -cum- Block Supply Officer, Dariyapur, Saran and the Executive Officer, Dighwara, Saran and during the course of inspection, certain irregularities



were found in the operation of the fair price shop and, accordingly, the Licensing Authority issued a show cause to the petitioner directing him to file reply and a copy of the enquiry report was also supplied to the petitioner along with the show cause. After considering the show cause reply filed by the petitioner as well as other documents and materials available on record, the Licensing Authority, i.e. the Sub Divisional Officer Sonapur, Chapra, cancelled the license of the petitioner to run the fair price shop under the Public Distribution System Scheme by the impugned order, dated 30.11.2017 inasmuch as the petitioner has violated the relevant provisions of the 2016 Order. The appeal, filed by the petitioner against the order of the Licensing Authority cancelling his license, has been dismissed by the District Magistrate, Chapra, Saran, and the revision application filed by the petitioner has also been dismissed by the Commissioner, Saran Division, Chapra. A copy of the enquiry report having the statements of the beneficiaries has also been annexed as Annexure C to the supplementary counter affidavit.

5. Learned Counsel for the petitioner submits that from perusal of the impugned order, dated 30.11.2017, it appears that the plea related to Weight and Measure Certificate, duly renewed uptill October, 2018, has been accepted by the Licensing



Authority. However, with regard to the finding of the Licensing Authority that distribution of kerosene oil for the month of September, 2017 in the month of October, 2017 [allegation no. (iv)] displays the guilty mindset of the petitioner is completely arbitrary and this finding of the Licensing Authority is not substantiated by any cogent and reliable evidence and reasoning inasmuch as the petitioner has taken a specific defense that on account of Chhath festival, he was distributing food grains amongst the beneficiaries/consumers first and subsequently distributed kerosene oil in the following month. There is no allegation of black marketing and/or diverting the kerosene oil against the petitioner, but the defence of the petitioner has been rejected by the Licensing Authority in perfunctory manner and by adopting an irrational approach.

6. With regard to allegation no. (v), it has been submitted that prescribed quantity of food grains at the prescribed rate were being distributed and the distribution register containing entries of each and every distribution was brought on record by the petitioner and the petitioner also produced statements on affidavit of some of the beneficiaries who denied of any complaints being made against the petitioner before the Licensing Authority, but the Licensing Authority, instead of verifying it from



the beneficiaries, who tendered the affidavits in support of the petitioner, rejected the affidavits in mechanical manner on the ground of alleged difference in the signatures in the affidavits of the beneficiaries vis-a-vis signatures put by them during the course of enquiry.

7. Learned Counsel for the petitioner further submits that Clause 23 of the 2016 Order contains mandate for Licensing Authority to ensure distribution of food grains under the supervision of the public representative and the 2016 Order involves the public representative actively in the process of distribution. The specific plea of the petitioner that the distribution of the food grain was being carried out in presence of the public representative and the certificate of the Mukhiya/Ward Councillor was produced with specific plea by the petitioner in his reply to the show cause, but there is not even a whisper much less any reason has been given by the Licensing Authority on the certificate of the public representative in the impugned order. He further submits that there is no allegation against the petitioner that he supplied the food grain to the beneficiaries on higher rate and diverted the food grain/kerosene oil for black marketing. Accordingly, the circumstances under Clause 25 (i) (a) to 25 (i) (e) of 2016 Order are not attracted as the power under Clause 27 of



the 2016 Order to cancel the license has to be read simultaneously with Clause 25 of the 2016 Order, which checks arbitrariness and limits the power of the Licensing Authority and the cancellation order has to be aligned with one of the circumstances under Clause 25, which must be existing to justify the order. There has to be reasons to take delayed distribution as one of the circumstances of Clause 25 of the 2016 Order to justify cancellation of license and non-consideration of specific plea of the petitioner amounts to denial of adequate opportunity to the petitioner. The impugned order, thus, becomes an unreasoned order to the extent of plea taken by the petitioner in his reply.

8. In support of his submission, learned Counsel for the petitioner relies on the decision of the Supreme Court, in the case of **Dharampal Satyapal Limited v. Deputy Commissioner of Central Excise, Gauhati and Others**, reported in **(2015) 8 SCC 519** (Paragraphs 20 to 23), to submit that duty to give reasons is now integrated to two principles of natural justice relating to absence of bias and opportunity to be heard as now the third principle of reasoned decision is also added to the two principles existing from before. The natural justice is to ensure fairness in the adjudication prevalent since ancient times even invoked in Kautilya's Arthshastra. He also relies on the decisions of the



Supreme Court, in the cases of **Sant Lal Gupta and Others v. Modern Cooperative Group Housing Society Limited and Others**, reported in (2010) 13 SCC 336, and **Oryx Fisheries private Limited v. Union of India and Others**, reported in (2010) 13 SCC 427, in support of his aforesaid arguments. In support of his argument regarding non-display of list of beneficiaries/sample food grain at the time of inspection, learned Counsel for the petitioner relies on a decision of this Court, in the case of **Raghuvir Prasad v. The State of Bihar and Others**, reported in 2015 (2) PLJR 910, in which the learned Single Judge has held that non-display of the notice board showing the list of beneficiaries/consumers within the premises of the petitioner is trivial in nature and cannot form basis for cancellation of license.

9. Learned Counsel for the respondents, on the other hand, submits that adequate opportunity was given to the petitioner by issuance of show cause along with the enquiry report, directing him to furnish his reply and upon proper consideration of the reply to the show cause submitted by the petitioner, the Licensing Authority has passed a reasoned order, rejecting the reply to the show cause of the petitioner and the order passed by the Licensing Authority has been upheld by the appellate authority as well as the revisional authority. The license of the petitioner has



been cancelled strictly in terms of Clauses 25 and 27 of the 2016 Order and there is no infirmity in the impugned order, warranting interference by this Court.

10. I have heard Mr. Anand Kumar Ojha, learned Counsel for the petitioner and Mr. Gyan Shankar, learned Assistant Counsel to Government Pleader No. 2 for the respondents and have also carefully gone through the materials available on record.

11. From perusal of the impugned order, it appears that with regard to allegation no. (iii) regarding Weight and Measure license not produced by the petitioner, no findings has been given by the Licensing Authority in this regard and it appears that the Licensing Authority has accepted the plea of the petitioner that Weight and Measure license has already been renewed by the petitioner till October, 2018.

12. With regard to allegation nos. (i) and (ii) regarding non-display of list of beneficiaries/sample food grains, I find that the same is fully covered by the decision rendered by this Court in the case of **Raghuvir Prasad** (supra), in which the Single Judge has 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.”

13. Accordingly, non-display of the list of beneficiaries/ sample food grains cannot warrant cancellation of license of the petitioner.

14. With regard to allegation no. (iv) regarding delay in the distribution of kerosene oil for the month of September, 2017, in the month of October, 2017 by the dealer, the petitioner has taken a specific plea that due to Chhath festival, the food grains were being distributed first and thereafter kerosene oil was supplied /distributed amongst the beneficiaries. The Licensing Authority, while rejecting the specific plea of the petitioner has not properly dealt with the defence of the petitioner giving the reason for distribution of kerosene oil, which was delayed by one month, has come to the finding that the delay in distribution of kerosene oil by one month shows the wrong intention and mindset of the petitioner. There is no allegation that the petitioner diverted the kerosene oil meant to be distributed to the beneficiaries.

15. Accordingly, in my opinion, the conclusion upon which the Licensing Authority has arrived in the impugned order relating to allegation no. (iv) shows non-application of judicial mind.



16. With regard to allegation no. (v), that the petitioner was not distributing food grains/kerosene oil each month and every month, I find that the petitioner has taken a specific plea in his reply to the show cause that the food grains/kerosene oil were being distributed in presence of the Panchayat Level Vigilance Committee at the prescribed rate and quantity and after distribution, entry to this effect has been made by the Committee in the distribution register containing entries of each and every distribution and a copy of the distribution register was also produced by the petitioner along with his reply to the show cause. In support of his defence, the petitioner also submitted, on affidavits, statements of some of the beneficiaries viz. Hiramuni Kumari, Harendra Rai, Radha Ballam Rai etc., who had allegedly complained before the Enquiry Committee regarding non-distribution of food grains every month. It appears that the Licensing Authority, while dealing with the specific defence of the petitioner regarding allegation no. (v), has come to the finding that the signatures of the beneficiaries in the affidavits submitted by the petitioner vary from the signatures put by them in their statements made before the Enquiry Committee and has rejected the defence of the petitioner on the ground that the aforesaid evidence has been produced by the petitioner in order to conceal



the irregularities committed by him. It appears that the distribution register and the certification given by the Panchayat Level Vigilance Committee has not been considered by the Licensing Authority at all.

17. Clause 23 of the 2016 Order prescribes as follows:

“23. Monthly certificate of distribution of food grains and other commodities. - The Sub Divisional Officer shall ensure to get the monthly certificate of distribution of food grains and other commodities from the fair price shop owner with certification jointly by the local mukhiya or by the head of the local municipal body, as the case may be, and by a member of the local vigilance committee.”

18. From perusal of the aforesaid provision, it appears that a duty has been cast upon the Sub Divisional Officer to get the monthly certificate of distribution of food grains and other commodities from the fair price shop owner, but it appears that the Sub Divisional Officer has failed to get the monthly certificate of distribution from the fair price shop owner. However, the distribution register of food grains, duly certified by the Panchayat Level Vigilance Committee, was produced by the petitioner along with his reply to the show cause, but I find that the same was not considered at all by the Licensing Authority, which amounts to denial of adequate opportunity to the petitioner due to non-



consideration of specific plea. There is not even a whisper much less any reason given by the Licensing Authority on the certification of the public representative duly submitted by the petitioner. The Licensing Authority unilaterally rejected the affidavits of the beneficiaries duly submitted by the petitioner in support of his defence stating therein that they were being supplied food grains every month regularly at the prescribed rate and quantity by the petitioner by holding that the signatures of the beneficiaries put in the affidavits are not matching with their signatures taken at the time of recording their statements during inspection before the Enquiry Committee. One-sided rejection of the affidavits of the beneficiaries without giving the petitioner an opportunity to examine and/or cross-examine the beneficiaries amounts to violation of principles of natural justice and denial of adequate opportunity to the petitioner.

19. It is trite law that the onus to prove the charges/allegations is upon the allegationist, but in the present case, the respondent authority instead of proving the charges levelled against the petitioner by cogent reason has in perfunctory manner rejected the defence of the petitioner without any consideration and by a reasoned order.



20. In view of the aforesaid discussions, on facts as well as on law, I am of the considered opinion that the impugned order, dated 30.11.2017, passed by the Sub Divisional Officer, Sonapur, Chapra (the Licensing Authority) is vitiated due to apparent error in the decision making process and the same is arbitrary, unreasonable and violative of principle of natural justice as well.

21. The orders of the revisional authority (the Commissioner, Saran Division, Chapra), in Supply Revision No. 29 of 2019, and the appellate authority (the District Magistrate, Chapra), in Supply Appeal Case No. 80 of 2017, merely reiterated the order of the Licensing Authority. Not only this, the revisional authority (the Commissioner, Saran Division, Chapra), in Supply Revision No. 29 of 2019, has gone beyond the charge levelled against the petitioner inasmuch as the revisional authority has also recorded its finding that the petitioner did not supply the food grains in prescribed rate and quantity to the beneficiaries attached to the fair price shop of the petitioner, and such allegation has not been levelled against the petitioner, which would be evident from the allegations mentioned herein above. Accordingly, both the orders are bad in law.

22. In the result, the impugned order, dated 30.11.2017, issued under Memo No. 1220 (Annexure-3), by the Sub



Divisional Officer, Sonapur, Saran and the consequential orders passed by the District Magistrate, Chapra and the Commissioner, Saran Division, Chapra, are not tenable and are hereby set aside.

23. Since the impugned orders have been set aside by this Court, the respondent no. 4, the Sub Divisional Officer, Sonapur, Saran (Chapra) is directed to restore the PDS License No. 86 of 2016, under Jitwarpur Gram Panchayat, forthwith and to allow the petitioner to run the fair price shop in accordance with law.

24. This application is, accordingly, allowed.

25. There shall be no order as to costs.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	01-11-2021
Uploading Date	31-01-2022
Transmission Date	N/A

