

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5956 of 2023

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Sharwan Chaudhary, Son of Balgovind Chaudhary, Resident of Village- Dayal Chak, Parsawan, P.S.- Pandarak, District- Patna.

... .. Petitioner/s

Versus

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

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 9436 of 2023

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Soni Kumari, Wife of Nitish Kumar Resident of Village- Pitaunjiya, P.S.- Bhadaur, District- Patna.

... .. Petitioner/s

Versus

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

... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 5956 of 2023)

For the Petitioner/s : Mr.Rajeev Kumar Labh, Adv

For the Respondent/s : Mr.Arvind Ujjwal (SC 4)

(In Civil Writ Jurisdiction Case No. 9436 of 2023)

For the Petitioner/s : Mr.Rajeev Kumar Labh, Adv

For the Respondent/s : Mr.Arvind Ujjwal (SC 4)

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

4 06-11-2023

Heard the learned counsels for the parties.

2. Both these writ petitions are being disposed of by

this common order. Petitioners seek for the following relief(s):-



“For quashing and setting aside the orders passed by the Sub- Divisional Officer, Barh vide **Memo No. 604 dated 18/9/2020** and **Memo No. 50 dated 22.01.2021** whereby and whereunder license of the petitioners’ Fair Price shop bearing license No. **362/16** and license No. **19/17** have been cancelled, respectively, with immediate effect contained in **Annexure-1** and quashing and setting aside the orders dated **6/1/2023** and **01.03.2023** passed by the learned Collector and District Magistrate, Patna in **E.C. Appeal Case No. - 23/2022-23** and **E.C. Appeal Case No. 24/2022-23**, respectively, whereby and where under appeal filed by the petitioners against the suspension and cancellation orders have been rejected contained in **Annexure-7.**”

3. Learned counsel appearing on behalf of the petitioners 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 their 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 petitioners 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 petitioners have exhausted all the remedies and all the authorities have found that the petitioners have violated the provisions of the Control Order, 2017. Learned counsel has therefore prayed this Hon'ble Court to dismiss both the writ petitions.



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 petitioners does not reveal that there is any proposal of the action sought to be taken against the petitioners. 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, both writ petitions are allowed. The impugned orders passed by the Collector and District Magistrate, Patna (Respondent No. 2) dated **06.01.2023** and **01.03.2023**, as well as the orders passed by the Sub-Divisional Officer, Barh (Respondent No. 3) dated **18.09.2020** and **22.01.2021** are set aside. The matters are remanded back to the Sub-divisional Officer for issuing a fresh show-cause notice to the petitioners strictly in compliance with the provisions of



Rule 27(ii) of the Control Order, 2016 and call for their explanation by giving them reasonable time.

10. On such show-cause notice being served, the petitioners shall file their explanation within the stipulated time. On receipt of the explanation submitted by the petitioners the authority concerned shall pass a reasoned order strictly in accordance with law duly taking into consideration the explanation submitted by the petitioners.

11. It is needless to mention that before passing any orders, the petitioners 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 petitioners.

12. With the above directions, both writ petitions are allowed to the extent indicated above.

(A. Abhishek Reddy , J)

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