

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)  
Civil Writ Jurisdiction Case No.15447 of 2017**

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Nizamuddin Ahmad S/o Late Israrul Haque, R/o Village- Sidhwaniya, P.S.-  
Kateya, District- Gopalganj. ... .. Petitioner

Versus

1. The State Of Bihar through the Secretary, Food & Consumer Protection Department, Bihar, Patna
2. The Divisional Commissioner, Saran at Chapra.
3. The District Magistrate-cum-Collector, Gopalganj.
4. The Sub-Divisional Officer, Hathuwa, Gopalganj.
5. The Block Supply Officer, Kateya, Gopalganj.

... .. Respondents

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**Appearance :**

For the Petitioner/s : Mr. N. K. Agrawal, Sr. Advocate  
Mr. Dhananjay Nath Tiwary, Advocate  
For the Opposite Party/s : Mr. Alok Ranjan, AC to AAG 5

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD  
C.A.V. JUDGMENT**

**Date : 19-10-2020**

Heard Mr. N. K. Agrawal, learned Senior Counsel for the petitioner and Mr. Alok Ranjan, AC to AAG 5.

2. This writ application has been preferred for issuance of a writ in the nature of certiorari to quash the order dated 25.09.2017 passed by the Divisional Commissioner Saran at Chapra (respondent no. 2) in Revision Case No. 243 of 2016 by which the respondent no. 2 has been pleased to dismiss the revision application and affirmed the order passed by the District Magistrate-cum-Collector, Gopalganj (respondent no. 3) in Supply Appeal Case No. 16 of 2015 whereby the appeal preferred against the order of the Sub-Divisional Officer,



Hathuwa cancelling the public distribution license of the petitioner being license no. 16 of 2017 has been upheld.

3. It is the case of the petitioner that Sub-Divisional Officer, Hathua vide letter no. 1039 dated 16.07.2015 (Annexure '1') called upon the petitioner to show cause as to why the license of the public distribution shop of the petitioner be not cancelled. The said show cause notice (Annexure '1') was issued in the light of the letter of the Block Supply Officer, Kateya bearing no. 60 dated 10.07.2015 reporting therein irregularities in the matter of distribution of ration/kerosene oil, realization of more than the fixed price, indulging in black marketing of the ration for the month of May 2015 and misbehaviour with the beneficiaries.

4. The petitioner was called upon to submit his explanation. With the show cause notice the report of the Block Supply Officer, Kateya was made available to the petitioner. In his report the Block Supply Officer has stated that in view of the letter of Sub-Divisional Officer as contained in letter no. 966 dated 29.07.2015 and letter no. 978 dated 30.06.2015 he had gone to village Singhwania and obtained the written statement of allegationists, namely, (1)Samich Khatoon, (2)Salimun Nesha, (3) Safikan Khatoon, (4) Salimun Nesha and (5)Fatma



Khatoon all residents of village Sindhwania, Panchayat Patkhauli. These beneficiaries appeared before the Block Supply Officer with their original cards and they complained that they are always scolded by the dealer Nizamuddin Ahmed. He used to say that they can go anywhere to make their complaint but they will not be provided ration. It was alleged that as on 10.07.2015 the dealer has not given any ration for even one month. It was further alleged that whenever consumer goes to take kerosene oil, the dealer gives only 2 liters of kerosene oil charging Rs.25/- per liter which is more than the fixed amount. The other consumers informed the Block Supply Officer that the dealer had sold the ration of May 2015 in black market. On 09.07.2015 when the Block Supply Officer went to the shop of the petitioner his shop was found closed and there was no board in front of the shop. It is stated that on 9<sup>th</sup> June also the Block Supply Officer had gone to inspect the shop of the petitioner but it was found closed. Vide his office letter no. 50 dated 11.06.2015 the dealer was asked to mend his ways but there was no improvement in the behavior of the dealer and he indulges in violating the rules and misbehaving with the beneficiaries.

5. The petitioner submitted his reply as contained in



Annexure '2'. He denied all the allegations and alleged that due to personal enmity and for some reason few persons are doing politics and acting in conspiracy with each other they want to get the license of the petitioner cancelled. As regards the complaint of the five consumers, the petitioner has submitted that the allegations are false and baseless, the five consumers have got the card only one month back from some sources and they have never come to lift the ration. It has been submitted in the reply that these consumers have acted with malice and in conspiracy they have tried to indulge the petitioner in false allegation of black marketing. The petitioner enclosed the written certificate of the local Mukhiya and Pramukh to support his contention that he was distributing rations and kerosene oil to the beneficiaries the certificate of one Ravindra Thakur Mukhiya and Pramukh Madhuri Mishra has been placed as enclosure with Annexure '2'.

6. The Sub-Divisional Officer, Hathuwa vide his memo no. 1108 dated 30.07.2015 held that the show cause submitted by the petitioner seems to be concocted and as regards the allegation made in the report of the Block Supply Officer, Kateya the petitioner had not made available any evidence/documents in that context. The petitioner had not



enclosed any material against the allegations that he had sold the ration of May 2015 by way of black marketing. No document in this regard has been submitted.

7. The Sub-Divisional Officer, therefore, cancelled the license of the shop of the petitioner.

8. The petitioner preferred an appeal and his main contention in the appeal was that the licensing authority has passed the impugned order without considering his show cause. The petitioner contended that the Panchayat representatives have certified about the genuineness of the system being followed by the petitioner in the distribution of the rations but that has not been considered. No proof with regard to the black marketing had been provided. The appellate authority found that show cause of the petitioner was available in the records of the licensing authority but there was no explanation with regard to the fact that the shops were found closed, the appellate authority found that certificates issued by the Mukhiya and Pramukh were not saying that the petitioner had distributed the ration to the allegationists and beneficiaries or that they had not come to the shop of the petitioner for lifting the ration. The appeal was, therefore, dismissed.

9. The revisional authority also refused to interfere



with the appellate order as he observed that the licensing authority had passed a detailed order discussing each and every aspects of the case properly and the District Magistrate, Gopalganj passed the detailed and reasoned order.

**10.** While assailing the impugned order, learned Senior Counsel for the petitioner has assailed the impugned order on the ground that the impugned order has been passed on the basis of the opinion of the Block Supply Officer, Kateya and the said inspection report is nothing but a table work of the said Block Supply Officer. The authority was required to look into the stock and sale register of the petitioner but surprisingly no such verification was done and on mere suspicion the authorities proceeded to cancel the license. Further submission is that the alleged five complainant had somehow secured the new ration card just one month before lodging the complaint but the Government had not increased the ration quota and as such the petitioner was not able to deliver ration to the complainant.

**11.** It is also submitted that the Block Supply Officer, Kateya is silent on the time of inspection, mode of investigation, inquiry and the Block Supply Officer did not collect any evidence regarding black marketing of the Government supplied ration. It is his submission that none of the authorities below



have appreciated the submissions of the petitioner and he has further relied upon a judgment of this Court in the case of **Brahmdeo Rai vs. the State of Bihar and others** reported in **2013 (2) PLJR 706**.

12. The State respondents have contested the writ application and it is their stand that the show cause notice was issued to the petitioner with the charges clearly mentioned in the same and the inquiry report of the Block Supply Officer was also enclosed with the show cause notice, therefore, the requirement of law and compliance with the principle of natural justice have been fulfilled. It is not correct that the impugned decision has been taken on the opinion of the Block Supply Officer rather after looking into the report of the Block Supply Officer and finding that the show cause report of the petitioner was not only silent on the point of his closure of shops whenever the Block Supply Officer went for inspection but was also not providing the proof of supply of rations for the month of May 2015 to the consumers and on finding the same the impugned decision was taken to cancel the license.

13. It is further submitted that in the writ application a new plea has been taken saying that the Government had not increased the quota to meet the supply demand of the new



beneficiaries who were five in numbers and had given the ration cards only one month back but in his show cause the petitioner has taken a plea that they had not visited the shop of the petitioner for lifting the ration. As regards the certificate of Mukhiya and Pramukh, it is stated that the learned Appellate authority has rightly taken a view that the certificates are not saying that the petitioner had supplied the rations to the allegationists or that they had not gone to the shop of the petitioner to lift the ration, in such circumstance no fault may be found with the impugned order.

**14.** As recorded in this Court's order dated 12.10.2020, learned Senior Counsel for the petitioner had informed this Court that no rejoinder is needed on behalf of the petitioner in this case and the writ application may be disposed of on the basis of the materials available on the record.

**15.** Having heard learned Senior Counsel for the petitioner and learned AC to AAG-9 on behalf of the State, this Court finds from the materials available on the record that the five allegationists in this case were having a valid ration cards in their name, still they were not provided with the rations and kerosene oil by the dealer. The show cause notice (Annexure '1') refers the report of the Block Supply Officer as contained in



letter no. 60 dated 10.07.2015, it is not the case of the petitioner that the copy of the said report was not made available to the petitioner. In fact the petitioner has himself enclosed the copy of the same which was an enclosure to the memo no. 1039 dated 16.07.2015 (Annexure '1'). The report talks of following allegations:-

- (i) Dealer has not provided even one month ration to the five allegationists and they were scolded when they went to the shop of the petitioner.
- (ii) The allegationists were charging more than the fixed price of kerosene oil.
- (iii) The Dealer has sold the ration of May 2015 in market by way of black marketing.
- (iv) The Block Supply Officer went to the shop of the petitioner on 9<sup>th</sup> June and 9<sup>th</sup> July, 2015 for inspection and on both the dates the shop was found closed.

**16.** In his response to the show cause notice, the petitioner has not at all denied the allegation that on 9<sup>th</sup> June and 9<sup>th</sup> July 2015 the shop was closed and no board was placed in front of the shop. As regards non-supply of rations to the five allegationists, he took a plea that they had made false allegations against the petitioner and according to the petitioner



they had not come to the shop of the petitioner for lifting the ration.

**17.** In the writ application the petitioner has taken a completely different stand saying that because the Government had not increased the quota he had not given supply to the five allgationists who had got new ration cards. The shifting of stand of the petitioner only shows his tentative mind and an attempt to come out of the allegation by taking one plea or the another. As regards black marketing of the ration for the month of May 2015, the petitioner made a one line statement that he had not done black marketing but did not produce even a prima-facie material showing supply of rations to the beneficiaries for the month of May 2015. If the stand of the petitioner was bona fide, he should have been in possession of the materials by way of documentary evidence to satisfy the licensing authority that the beneficiaries were supplied the rations and kerosene oil and in this regard the proof would have been produced but non-production of the proof by the petitioner only shows that he was unable to satisfy the licensing authority on this point by producing any cogent evidence. The two certificates of Mukhiya and Pramukh, in the opinion of this Court, cannot be given much weightage as those are more in the nature of certificate than that even a prima-facie proof of fact that the petitioner had supplied the ration for the month of May 2015 to the consumers.

**18.** So far as the judgment of this Court in the case of



**Brahmdeo Rai** (supra) is concerned, this Court has gone through the same and finds that the facts situation of the said case were completely different than that of the present case. In the said case the learned co-ordinate Bench of this Court had found from the materials on the record that the petitioner in the said case was not supplied with the copy of the inquiry report as well as the statement of the complainants/consumers which were not appended as enclosures with the counter affidavit.

19. In the present case the petitioner had been made available a copy of the report of the Block Supply Officer which contained the names of the allegationists and their grievance /allegation against the petitioner. There is no pleading in the writ application that the petitioner was not supplied with the copy of the said report rather this Court as shown hereinabove that the petitioner has made contradictory statements in the writ application if compared with his stand in the show cause submitted before the licensing authority. The Court is, thus, satisfied that the principle of natural justice has been duly complied with in this case. It is well settled by several judicial pronouncements some of which this Court will take note of hereinafter that the principles of natural justice cannot be put in a straight jacket formula and plea of infraction of rules of natural justice or it is not a valid proceedings cannot come to rescue of a person unless prejudice is caused to the aggrieved person. In the case of **State Bank of Patiala vs. S. K. Sharma**



reported in **(1996) 3 SCC 364** the Division Bench of Hon'ble Apex Court distinguished between adequate opportunity and no opportunity at all and held in paragraph '28' inter alia as under:

"28..... There may indeed be any number of varying situations which it is not possible for anyone to foresee. In our respectful opinion, the principles emerging from the decided cases can be stated in the following terms in relation to the disciplinary orders and enquiries: a distinction ought to be made between violation of the principle of natural justice, audi alteram partem, as such and violation of the facet of the said principle. In other words, distinction is between "no notice"/"no hearing" and "no adequate hearing" or to put it in different words, "no opportunity" and "no adequate opportunity". To illustrate- take a case where the person is dismissed from service without hearing him altogether (as in *Ridge v. Baldwin*<sup>1</sup>). It would be a case falling under the first category and the order of dismissal would be invalid or void, if one chooses to use that expression (*Calvin v. Carr*<sup>4</sup>). But where the person is dismissed from service, say, without supplying him a copy of the enquiry officer's report (*Managing Director, E.C.I.L. v. B. Karunakar*<sup>18</sup>) or without affording him a due opportunity of cross-examining a witness (*K.L. Tripathi*<sup>17</sup>) it would be a case falling in the latter category - violation of a facet of the said rule of natural justice- in which case, the validity of the order has to be tested on the touch-stone of prejudice, i.e., whether, all in all, the person concerned did nor did not have a fair hearing. It would not be

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1.1964 AC 40: (1963) 2 ALL ER 66: (1963) 2 WLR 935

4. 1980 AC 574 : (1979) 2 ALL ER 440 : (1979) 2 WLR 755,PC

17. (1984) 1 SCC 43 : 1984 SCC (L & S) 62

18. (1993) 4 SCC 727 : 1993 SCC (L & S) 1184 : (1993) 25 ATC 704



correct - in the light of the above decisions to say that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. In our opinion, the approach and test adopted in B. Karunakar<sup>18</sup> should govern all cases where the complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing (i.e., adequate or a full hearing) or of violation of a procedural rule or requirement governing the enquiry; the complaint should be examined on the touchstone of prejudice as aforesaid.”

**20.** It is well settled that principle of natural justice cannot be put in a straight jacket formula and the applicability of it will depend upon the facts of the case. The public distribution shop system caters the need of Below Poverty Line (BPL) families and vulnerable above Poverty Line (APL) families, it is meant for those who need subsidized food articles and denial of the rations/kerosene to needy beneficiaries would defeat the very object of total food security and elimination of hunger. Thus, the Court is of the view that in the given facts and circumstance if the licensing authority has cancelled the license of the petitioner no fault may be found with the same. The appellate authority has rightly appreciated the materials present on the record and upheld the order of the licensing authority. There being a concurrent finding and no prima facie material to make out a case of violation of principles of natural justice, the revisional authority has also rightly refused to interfere with the appellate order. Now the Bihar Targetted PDS (Control) Order, 2016 has come



into effect and the Court has been informed that the shop is still un-  
allotted, if it is so, it will be open for the competent authority to  
proceed with the allotment under the provisions of the Bihar  
Targetted PDS (Control) Order, 2016.

21. This writ application stands dismissed.

**(Rajeev Ranjan Prasad, J)**

vats/-

<b>AFR/NAFR</b>	
<b>CAV DATE</b>	14.10.2020
<b>Uploading Date</b>	19.10.2020
<b>Transmission Date</b>	

Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

