

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1419 of 2014

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Dilip Kumar Rai, son of Late Shaligram Rai, resident of Village and P.O.-
Bank, P.S. Chandan, District- Banka.

.... Petitioner/s

Versus

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

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajeev Kumar Labh

For the Respondent/s : Mr. Gautam Bose, AAG-8

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

2 20-05-2015

Heard the parties.

The petitioner is a fair price shop dealer under the
Public Distribution System Control Order, 2001 as enforced vide
Fair Price Shop Order, 2007 (hereinafter referred to as ‘the
Control Order’) bearing Licence No.72 of 2012.

The licence of the petitioner has been cancelled vide
order bearing Memo No.1570 dated 16.12.2013 placed at
Annexure-1.

The sole issue raised by the petitioner to question the
impugned order of cancellation is that it has been passed without
complying with the mandatory requirements of Clause 7(ii) of
‘the Control Order’ which mandates a notice against the
proposed cancellation on the dealer.

A counter affidavit has been filed supporting the

impugned action but there is no justification regarding noncompliance of the mandatory conditions of Clause-7(ii) of 'the Control Order'.

I have heard learned counsel for the parties and I have perused the records.

Although the order of cancellation is appealable under section 15 of 'the Control Order' but considering that the impugned order violates the mandatory conditions underlying section 7(ii) of 'the Control Order' which prohibits an authority from passing any order of cancellation unless the licensee has been given reasonable opportunity of stating his case against the proposed cancellation, the order of cancellation in absence of mandatory notice against the proposed cancellation cannot be upheld. The show cause notice issued vide Memo no.1311 dated 2.11.2013 present at Annexure -2 only requires the petitioner to respond as to why a proceeding for imposing penalty be not initiated. The notice is definitely not in the nature of a notice against proposed cancellation.

For the reasons aforementioned the order of cancellation bearing Memo no.1570 dated 16.12.2013 passed by the Licensing Officer –cum- Sub-Divisional Officer, Banka placed at Annexure-1 cannot be upheld and is accordingly set

aside.

The writ petition is allowed. The licence of the petitioner is restored.

This order however, would not preclude the Licensing Authority to proceed against the petitioner in accordance with law and after observing the requirement of mandatory Clause 7(ii) of 'the Control Order'.

(Jyoti Saran, J)

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