

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8560 of 2014

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Phul Kumar Yadav, son of Sri Triveni Yadav, resident of Village and P.O-
Koriyan, P.S- Rosara, District- Samastipur.

.... Petitioner/s

Versus

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

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajeev Kumar Labh

For the Respondent/s : Mr. Md.Raisul Haque, SC-4

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

2 20-05-2015

Heard the parties.

The petitioner is a licensee 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.162 of 2007.

The licence of the petitioner has been cancelled by the Licensing Authority cum Sub-Divisional Officer, Rosera district- Samastipur vide order bearing Memo No.66 dated 3.4.2014 placed at Annexure-1.

The short issue raised by Mr. Labh, learned counsel appearing on behalf of the petitioners to question the order of cancellation is that it has been passed in gross violation of Clause 7(ii) of ‘the Control Order’ which mandates service of



notice against the proposed cancellation. Learned counsel with reference to a show cause notice issued vide Memo no.64 dated 12.3.2014 present at Annexure-2 submits that the same merely requires the petitioner to respond to the alleged irregularities and which duty was discharged by him. He submits that since thereafter no notice against the proposed cancellation was issued by the Licensing Authority before passing the impugned order of cancellation.

I have heard learned counsel for the parties and I have perused the materials on record.

Clause 7(ii) of 'the Control Order' mandates service of notice against the proposed cancellation and which mandatory pre-condition is missing in the present case inasmuch the notice merely requires the petitioner to respond to the allegations and nothing further. It does not satisfy the requirement of Clause 7(ii) of 'the Control Order'.

In the circumstances, the order of cancellation bearing Memo No.66 dated 3.4.2014 passed by the Licensing Authority cum Sub-Divisional Officer, Rosera 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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