

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4114 of 2015

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Heera Prasad @ Heera Prasad Singh, son of Late Janak Singh, resident of
Village - Saheb Nagar, Post - Jat Dumri, P.S.- Gourichak, 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, District - Patna.
3. The Sub-Divisional Officer, Masourhi, Patna District - Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajeev Kumar Labh

For the Respondent/s : Mr. Satyendra Kr. Jha, AC to GP-3

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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.176 of 2007 and is aggrieved by the order of cancellation passed by the Licensing Authority cum-Sub-Divisional Officer, Masourhi, district- Patna vide Memo No.30 dated 29.3.2011 placed at Annexure-1 to the writ petition and which order has been affirmed by the appellate authority i.e. the District Magistrate cum Collector, Patna vide order passed on 8.1.2015 in E.C. Appeal Case No.08 of 2013-14 present at Annexure-5 whereby the appeal has been dismissed.

The short issue raised by Mr. Rajeev Kumar Labh,



learned counsel appearing on behalf of the petitioner is that the order of cancellation and its affirmation is without satisfying the requirement underlying Clause 7(ii) of 'the Control Order' inasmuch as the show cause notice dated 4.2.2011 placed at Annexure-3 is not a notice against the proposed cancellation.

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

Although a counter affidavit has been filed supporting the impugned orders but the issue raised by Mr. Labh to question those orders are indefensible for that the show cause notice placed at Annexure-3 is not a notice against the proposed cancellation rather it merely requires the petitioner to respond as to why he be not proceeded for the alleged irregularities.

Clause 7(ii) of 'the Control Order' specifically prohibits the licensing authority from passing an order of cancellation unless the licensee has been given reasonable opportunity to respond against the proposed cancellation and which duty has not been discharged by the licensing authority. On this limited ground the order of cancellation bearing Memo No.30 dated 29.3.2011 as well as its affirmation by the appellate authority vide order dated 8.1.2015 and impugned at Annexures-1 and 5 respectively cannot be upheld and are set aside.

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

This order, however, would not preclude the Licensing Authority in proceeding against the petitioner afresh but in accordance with law.

(Jyoti Saran, J)

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