

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.691 of 2016

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Afsana Begam Wife of Nizamuddin, Resident of Village - Kanhariya, P.S. -
Dagarua, District - Purnea.

.... Petitioner

Versus

1. The State of Bihar through Collector, Purnea.
2. The S.D.O., Baisee, Purnea.
3. The B.S.O., Dagarua, Purnea.

.... Respondents

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Appearance :

For the Petitioner : Mr. N.K. Agrawal, Sr. Advocate,
Mr. Vijay Anand, Advocate

For the State : Mr. Ajit Kumar, A.C. to G.P.19

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 30-03-2016

Heard parties.

Petitioner is aggrieved by the order dated 22.09.2015
(Annexure 4) by which the consumers under the licence have been
tagged with the PDS dealer, namely, Durga Prasad Sah having
licence no.29/07. Reason has been assigned that the F.I.R. has been
lodged against the petitioner and, therefore, he cannot run his shop.

In my view, the order is not sustainable in law as there is
no provision of suspension or cancellation of licence in view of any
F.I.R. having been lodged even under Section 7 of the Essential
Commodities Act, 1955 (hereinafter referred to the "Act"). Only
provision of cancellation of licence is under Clause 7(ii) of the



Public Distribution System (Control) Order, 2001 which lays down that if the licensee contravenes any provision in terms and conditions of the licence then without prejudice to any action that may be taken against him under the Act, his licence can be cancelled after granting him reasonable opportunity. Secondly, under Clause 14 there is provision of cancellation of licence as a consequence of conviction of the licensee under Section 3 of the Act.

It is contended on behalf of the petitioner that shop can be run through the representatives also and, as such, there was no occasion for tagging the consumers to the others PDS shops. However, it is contended on behalf of the petitioner that he has been granted anticipatory bail on 23.11.2015, therefore, in my view, there is no difficulty in running the shop now.

Learned counsel for the State has not been able to show the provision of law that in such a situation the consumers would have to be tagged to another shop. Clause 7(vi), (vii) and (viii) lays down in clear terms that allocation of the PDS dealer cannot be discontinued in any circumstances save and except after cancellation of licence. Clause 7(viii) lays down in clear terms that in general circumstances, the tagging of consumers cannot not be changed.

In above view of the matter, the order impugned, as

contained in Annexure 4, being not sustainable in law, the same is quashed and set aside.

Petitioner has been granted anticipatory bail, therefore, the allocation should again be tagged to his licence and supplies should be restored as no order of cancellation of the licence has been passed till date.

This writ application stands allowed.

(Dr. Ravi Ranjan, J)

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