

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22814 of 2013

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Lal Babu Kamat, Son Of Late Jakhai Kamat, Resident of Village - Khutauna
(Goth), P.S. - Khutauna, District - Madhubani

.... Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Food and Consumers Protection, Govt.
of Bihar, Patna
3. The Commissioner, Darbhanga Division, Darbhanga
4. The District Collector, Madhubani
5. The S.D.O. Phulparas, District - Madhubani
6. The District Supply Officer, Madhubani
7. The Block Supply Officer Khutauna, P.S. - Khutauna, District - Madhubani
8. Jay Prakash Bharti Son Of Late Surya Narayan Panjiar P.D.S. Dealer, Gram
Panchayat - Khutauna, P.S. - Khutauna, District - Madhubani

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Yogendra Kumar, Advocate

For the Respondent/s : Mr. Nawal Kishore Singh, SC-2

Mr. Kamlesh Prasad, AC to SC-2.

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 12-04-2016

Heard learned counsel for the petitioner and the State.

The petitioner is aggrieved by the order dated 15.09.2008 passed by the Sub-Divisional Officer, Phulparas, as contained in Annexure-12, by which his licence for running P.D.S. Shop has been cancelled. He also assails the order dated 8.06.2009 passed by the Collector, Madhubani in Supply Appeal No.63/2008-09 as contained in Annexure-13 by which his appeal has been dismissed and the order passed by the licensing authority has been upheld. He further assails the order dated 6.04.2013 passed by the revisional authority, i.e., the Commissioner, Darbhanga Division, Darbhanga as contained in

Annexure-14 by which revision has also been dismissed.

The sole issue which is being raised on behalf of the petitioner at the time of hearing is that the order of cancellation of licence was passed without granting any reasonable opportunity to the petitioner to explain his stand for the proposed cancellation as no proper show cause notice for the same was ever issued and served upon him.

A counter affidavit has been filed on behalf of the respondent nos. 4 to 7 answering the allegations made in the writ petition.

Learned counsel appearing for the State has submitted that this issue was never raised by the petitioner before the authorities and at the first time, the same is being raised before this Court. In my view, the issue is not as to whether the petitioner has been able to raise such issue before the authorities or not rather the question of law is as to whether the petitioner has been granted reasonable opportunity under Clause 7 (ii) of the Public Distribution System (Control) Order, 2001 to explain his stand for the proposed cancellation of licence or not?

This issue is no longer *res integra* as it is well settled that for cancellation of P.D.S. licence under Clause 7 (ii) of the Public Distribution System (Control) Order, 2001, a show cause notice for proposed cancellation has to be issued so that a proper reply could be filed by the licensee. A vague notice without specifying the purpose

for which it is being issued, would not be sufficient. As such, the mandatory requirement under the aforesaid Control Order, 2001 cannot be held to have been complied. It is apparent from Annexure-7 which is a show cause notice and upon which the order of cancellation has finally been passed vide Annexure-12, that it is merely asking an explanation from the petitioner as to why proper action should not be taken against him. It cannot be held that it is a notice for proposed action of cancellation. As such, in my view, the order of cancellation cannot be held to be sustainable.

Accordingly, this writ application succeeds. The impugned orders as contained in Annexure-12, 13 and 14 are quashed and set aside.

It is made clear that this order would not come in the way of the licensing authority in initiating a fresh proceeding in accordance with law, if it so desires but at the same time, if no proceeding is initiated within two months from the date of receipt/production of a copy of this order, then the petitioner would be entitled for resumption of supplies.

(Dr. Ravi Ranjan, J)

V.K. Pandey/-

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