

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8869 of 2017

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Ram Rekha Tiwari, son of Late Ram Sevak Tiwary, Resident of Village and P.O.-
Rampura, P.S.- Singhwara, District- Darbhanga.

.... Petitioner

Versus

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

.... Respondents

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Appearance :

For the Petitioner : Mr. Rajeev Kumar Labh, Advocate.

For the Respondents : None

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 14-12-2017

Heard learned counsel for the petitioner.

2. The writ petition has been filed for the following reliefs—

“(A) A Certiorari for quashing and setting aside the order passed by the Sub-Divisional Officer, Sadar, Darbhanga vide Memo No. 355 dated 10.06.2017 whereby and whereunder licence of the petitioner’s Fair Price Shop bearing no. 33/16 has been cancelled contained in Annexure-1.

(B) A mandamus commanding the Respondents to restore the petitioner’s licence as before and to make allotment for the petitioner’s shop..

(C) Any other relief or reliefs for which petitioner may be found entitled in the fact and circumstances of the present case may be granted to him.”

3. It is submitted that the impugned order of cancellation of the petitioner’s PDS licence has been passed without a show cause in



that regard and the only other show cause issued was for the purpose of suspension of the petitioner's licence. It is therefore submitted that the impugned action has been taken without confronting the petitioner with regard to proposed cancellation of the licence. Reliance is placed on the decisions of this Court rendered in *Bhola Prasad Yadav vs. The State of Bihar & others*, 2010(3) PLJR 825 and also in *Parsauni Khirodhar Primary Agriculture Co-operative Society Ltd. & others vs. The State of Bihar and others*, 2015(3) PLJR 189.

4. None appears on behalf of the respondents. The stand of the petitioner with regard to non-service of the show cause has not been controverted, as no counter affidavit has been filed till date.

5. Having heard the parties and on a consideration of the materials on record, this Court finds merit in the writ petition. It is not in dispute that the show cause was issued only with regard to suspension of the petitioner's licence and no further show cause was issued proposing cancellation of the PDS licence. The impugned order of cancellation cannot therefore be said to be founded upon a show cause for proposed cancellation which vitiates the decision making process as being violative of the principles of natural justice. Moreover, the show cause notice, in not indicating the proposed cancellation of the licence, also failed to fulfill the mandatory requirement in terms of Clause 7(ii) of the Bihar Fair Price Shop Order, 2007 as held in *Parsauni Khirodhar Primary Agriculture Co-operative Society Ltd. (supra)*.



6. The impugned order dated 10.06.2017 is accordingly quashed. The writ petition stands allowed.

7. It is made clear however that the respondents shall be at liberty to take fresh steps in the matter after issuance of fresh show cause notice and in accordance with law, if so advised.

8. In the meantime, supplies to the petitioner shall be restored without delay until fresh orders are passed by the Respondent no. 3.

(Vikash Jain, J)

Md. Ibrarul/BT

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	20.12.2017
Transmission Date	N.A.

