

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3770 of 2015

=====

Madan Mohan Mohit son of Late Laliteshwar Prasad Singh resident of Village -
Dakhingaon, P.O. and P.S. Wazirganj, District- Gaya

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Food & Civil Supplies
Department, Government of Bihar, Patna
2. The District Magistrate, Gaya
3. The District Supply Officer, Gaya
4. The Sub- Divisional Officer, Sadar, Gaya
5. The Block Supply Officer, Wazirganj, Gaya

.... Respondents

=====

Appearance :

For the Petitioner : Mr. Shailesh Kumar, Advocate.

For the Respondents : Mr. M.K. Sinha, SC-1

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 08-12-2017

Heard learned counsel for the petitioner and learned
counsel for the respondents.

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

*(i) For issuance of a writ of Certiorari for quashing of
order dated 02.09.2014 passed by the District Magistrate,
Gaya in Supply Appeal Case No. 11/2013 whereby and
whereunder the appeal filed by the petitioner against the
order vide memo no. 65 dated 03.12.2007 cancelling the
Fair Price Dealer Licence No. 45/85 of the petitioner has
been cancelled without considering the clarification of the
petitioner and by ignoring the material available on
record.*

(ii) For issuance of a writ of Certiorari for quashing of



order vide memo no. 65 dated 03.12.2007 passed by the Sub-Divisional Officer, Sadar, Gaya whereby the Fair Price Dealer Licence No. 45/85 of the petitioner has been cancelled on the vague ground of closure of shop and irregular distribution of K. Oil.

(iii) For issuance of a writ of mandamus for direction to the respondents to reinstate/restore the Fair Price Dealer Licence No. 45/85 of the petitioner by considering the innocence of the petitioner and mala fide intention of the respondents authorities.

(iv) For issuance of any other relief/reliefs which may deem fit and proper of the facts and circumstances of the case and for which the petitioner may entitle.”

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. Learned counsel for the respondents relies on the counter affidavit to oppose the writ petition. However, he is unable to controvert the stand of the petitioner that no show cause for proposed cancellation of the licence was issued.

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. & Ors. vs. The State of Bihar and others, 2015 (3) PLJR 189*.

6. The impugned order dated 02.09.2014 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. 4.

(Vikash Jain, J)

Md. Ibrarul/Chandran

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	16.12.2017
Transmission Date	N.A.

