

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11417 of 2016

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Bacchan Singh S/o Late Triyogi Sah Resident of Ward No. 20, Nagar Panchayat
- Barahiya, P.S. Barahiya, District - Lakhisarai

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Food & Consumer Protection Department, Bihar, Patna
2. The District Magistrate-Cum-Collector, Lakhisarai
3. The Sub Divisional officer, Lakhisarai
4. The Block Supply officer, Barahiya, District Lakhisarai

.... Respondents

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Appearance :

For the Petitioner : Mr. Dhananjaya Nath Tiwari, Advocate

For the Respondents : Mr. Manish Kumar, GP 8

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 30-11-2017

I.A. No. 8651 of 2017

This Interlocutory Application has been filed for adding a prayer in the writ petition for setting aside the show cause notice contained in Memo No. 299 dated 19.06.2013 (Anenxure-1) passed by the learned Sub Divisional Officer, Lakhisarai because the same is not in accordance with law as enumerated in Clause 7(ii) of P.D.S. (Control) Order, 2001.

2. Having regard to the nature of the prayer, the interlocutory application is allowed and the same is treated as forming part of the writ petition.

3. I.A. No. 8651 of 2017 stands disposed of.

CWJC No. 11417 of 2016

4. Learned counsel for the petitioner assails the impugned order of cancellation of his PDS licence on two grounds; firstly that copy of the enquiry report was not made available to the petitioner



prior to passing of the order of cancellation; and secondly that the show cause notice did not indicate the proposed cancellation of the licence which is a mandatory requirement in terms of Clause 7(ii) of the Bihar Fair Price Shop Order, 2007. Reliance is placed on *Prasuani Khirodhar Primary Agriculture Co-operative Society Ltd. & Ors. vs. The State of Bihar and others*, 2015(3) PLJR 189.

5. Learned counsel for the respondents relies on the counter affidavit to submit that the details of the enquiry report were made known to the petitioner in the show cause notice itself and hence the petitioner was fully aware about the contents thereof. Moreover, it is submitted that no relief ought to be granted to the petitioner in view of the alternative remedy by way of an appeal against the order of the Sub Divisional Officer being available, which has however not been availed of by the petitioner.

6. Having heard learned counsel for the parties and on consideration of the materials on record, this Court is of the view that non-supply of the enquiry report to the petitioner has resulted in violation of natural justice and thus the decision making process stands vitiated.

7. This Court is also of the view that the bar of alternative remedy would not disentitle the petitioner for relief in a case of the present nature where the impugned order is founded upon a show cause notice which is not sustainable in law. Clause 7(ii) of the Bihar Fair Price Shop Order, 2007 clearly mandates that no order of cancellation shall be made under this clause unless the licensee has been given a reasonable opportunity for stating its case against the proposed cancellation.

8. A perusal of the show cause notice in memo no. 299 dated 19.06.2013 (Annexure-1) discloses that the proposed cancellation of the license was not made known to the petitioner and thus the requirement of Clause 7(ii) aforesaid cannot be said to have



been fulfilled. Accordingly, the show cause cannot be treated as a notice under Clause 7(ii), as also observed in Prasuni’s case (*supra*).

9. The impugned order dated 19.06.2013 (Anenxure-1) is hereby quashed and the matter remanded to the Sub-Divisional Officer, Lakhisarai for taking decision afresh in the matter after supplying a copy of the enquiry report to the petitioner and granting an opportunity of hearing in accordance with law. Supplies to the petitioner shall be restored without delay until fresh orders are passed by the Respondent no. 3.

10. The writ petition stands allowed as above.

(Vikash Jain, J)

Chandran/BT

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	12.12.2017
Transmission Date	N.A.

