

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10510 of 2016

=====

Jainath Singh son of late Kanti Singh, resident of Village - Panchrukhi, P.S. -
Dharhara, District - Munger.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Food and Civil Supplies, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Food and Civil Supplies, Govt. of Bihar, Patna.
3. The District Magistrate, Munger.
4. The Sub Divisional Officer, Sadar, Munger.
5. The Block Supply Officer, Sadar, Munger.

.... Respondents

=====

Appearance :

For the Petitioner : Mr. Sushmita Mishra, Advocate.

For the Respondents : Mr. Ajeet Kumar, SC-28

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 08-11-2017

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

2. The present writ petition has been filed for quashing the
order dated 08.03.2016 passed by the District Magistrate, Munger
(respondent no. 3) whereby and whereunder the P.D.S. Appeal No.
13/14-15 against the cancellation of the P.D.S. Licence of the petitioner
has been dismissed and the order dated 28.02.2014 passed by the Sub-
Divisional Officer, Sub-Division Sadar, Munger (respondent no. 4)
whereby and whereunder the P.D.S. license of the petitioner bearing
no. 16/08 has been cancelled.

3. Learned counsel for the petitioner makes a short



submission to assail the validity of the impugned order of cancellation as affirmed in appeal, to the effect that the show cause notice was issued in violation of Clause 7(ii) of the Bihar Fair Price Shop Order, 2007 as the same did not disclose the proposed cancellation of the petitioner's license. Reliance is placed on *Prasuani Khirodhar Primary Agriculture Co-operative Society Ltd. & Ors. vs. The State of Bihar and others*, 2015 (3) PLJR 189.

4. Learned counsel for the respondents submits that no relief ought to be granted to the petitioner in view of alternative remedy by way of revision against the appellate order of the District Magistrate being available, which has however not been availed of by the petitioner.

5. Having heard the parties and on a careful consideration of the materials on record, this Court is 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.

6. A perusal of the show cause notice in memo no. 47 dated 15.02.2014 (Annexure-3) 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*). The impugned order of cancellation as well as the appellate order are thus held to be vitiated and are accordingly quashed.

7. The license of the petitioner stands restored. It is made clear that the authorities may proceed afresh by issuing appropriate show cause notice in accordance with Clause 7(ii) of the Bihar Fair Shop Order, 2007, if so advised.

8. The writ petition stands allowed as above.

(Vikash Jain, J)

Md. Ibrarul/Chandran

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	13.11.2017
Transmission Date	N.A.

