

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8796 of 2017

=====

Murari Yadav, Son of late Jagdeo Yadav, Resident of Village- Bandhua Kurawa,
Post- Saraiya, P.S.- Baunshi, District- Banka.

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Department of Food and Consumer Protection, Government of Bihar, Old Secretariat, Patna.
2. The Collector, Banka, District- Banka.
3. The Sub-Divisional Officer, Banka, District- Banka.

.... Respondents

=====

Appearance :

For the Petitioner : Mr. Rajeev Kumar Labh

For the Respondents : None

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 14-12-2017

Heard learned counsel for the petitioner. None appears on
behalf of the respondents.

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

“(i) For quashing and setting aside the order passed by the Sub-Divisional Officer, Banka and issued the same vide Memo No. 33 dated 06.03.2009 whereby and whereunder licence of the petitioner’s Fair Price Shop bearing no. 12/91 has been cancelled contained in Annexure-1 and quashing and setting aside the order dated 26.02.2016 passed by the learned Collector, Banka in E.C. Misc. Appeal No. 65/08-09 contained in Annexure-4 whereby and whereunder appeal filed by the petitioner against the cancellation order has been filed by the petitioner against the cancellation order has been rejected and affirmed the cancellation order.

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



the petitioner's shop.

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

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

6. The impugned order dated 06.03.2009 passed by the Sub-Divisional Officer, Banka (Annexure-1) as well as the appellate order dated 26.02.2016 passed by the Collector, Banka (Annexure-4) are hereby 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)

B.T/Chandran

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	19.12.2017
Transmission Date	N.A.

