

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15701 of 2016

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Pradeep Das Son of Late Shyam Das resident of village Khiddi, P.S. Rajoun,
District Banka.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Divisional Commissioner, Bhagalpur Division, Bhagalpur.
3. The District Magistrate, Banka.
4. The District Supply Officer, Banka.
5. The Sub-Divisional Officer, Banka.
6. The Block Supply Officer, Rajoun, Banka.

.... Respondents

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Appearance :
For the Petitioner/s : Mr. Praveen Kumar, Adv
For the Respondent/s : Mr. ARVIND UJJWAL-SC4

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 20-02-2018

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

2. The present writ petition has been filed for quashing the
order contained in memo no. 850 dated 28.09.2011 (Annexure-3) passed
by the Sub-Divisional Officer, Banka, the appellate order dated
10.07.2015 (Annexure-4) in Appeal No. 93 of 2011 passed by the
District Magistrate, Banka as also the revisional order dated 20.07.2016
(Annexure-5) in Revision Appeal Case No. 42/2015-16 passed by the
Divisional Commissioner, Bhagalpur by which the licence of the
petitioner's Fair Price shop bearing no. 4 of 1994 has been cancelled and
monthly allotment has been stopped; and further to restore the



petitioner's licence.

3. Learned counsel for the petitioner makes a short submission to assail the order of cancellation to the effect that while the show cause notice dated 09.07.2011 was issued for the purpose of suspension of the PDS licence and to which the petitioner submitted his show cause the impugned order of cancellation dated 28.09.2011 passed by the Sub Divisional Officer, Banka travelled beyond the same and the petitioner's PDS licence has been cancelled. It is submitted that the only action that could be taken against the petitioner was to the extent to which the show cause notice was issued. In other words, the show cause notice requiring the petitioner to submit his explanation against suspension of the licence would not result in cancellation of the licence. Learned counsel for the petitioner relies on the judgment of the Apex Court in *S.L. Kapoor vs. Jagmohan and others*, AIR 1981 SC 136 for this proposition.

4. Learned counsel for the respondents appears and has been heard.

5. Having regard to the nature of the grievance of the petitioner, this Court is of the view that the impugned order of cancellation dated 28.09.2011 cannot be sustained inasmuch as the same travels beyond the show cause notice and is impermissible. Such invalidity cannot also be cured in appeal or revision. In the circumstances, the impugned order dated 28.09.2011(Annexure-3) passed by the Sub Divisional Officer, Banka the appellate order dated 10.07.2015 (Annexure-4) passed by the District Magistrate, Banka and the revisional order dated



20.07.2016 (Annexure-5) are hereby quashed and the writ petition stands allowed.

Chandran/BT

(Vikash Jain, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.02.2018
Transmission Date	NA

