

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8592 of 2014

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Rajeshwar Prasad Singh @ Mohan Singh @ Mohan Prasad Singh, Son of Late Keshav Narain Singh resident of Village and P.O- Balthi Narsingh, P.S- Sahebganj, District- Muzaffarpur.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Secretary, Food and Civil Supplies, Government of Bihar, Patna.
3. The Divisional Commissioner, Tirhut Division, Muzaffarpur.
4. The District Magistrate, Muzaffarpur, District- Muzaffarpur.
5. The Sub- Divisional Officer, Muzaffarpur, West, District- Muzaffarpur.
6. The Block Supply Officer, Sahebganj, District- Muzaffarpur.

.... Respondents

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Appearance :

For the Petitioner : Mr. Chandan, Advocate.

For the Respondents : Mr. Roy Shivaji Nath, Advocate.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 13-07-2018

Heard learned counsel for the petitioner as well as learned counsel for the State.

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

“(I) For issuance of an appropriate writ in the nature of CERTIORARI for quashing the order dated 30.07.2013 passed by the respondent no. 4 in Case No. 27 (PDS)/2011-12 whereby and whereunder the District Magistrate, Muzaffarpur has been pleased to reject the appeal filed by the petitioner against the order of the Sub-Divisional Officer, West, Muzaffarpur (respondent no. 5), canceling the Public Distribution System (hereinafter referred to



P.D.S.) License of the petitioner.

(II) For issuance of an appropriate writ in the nature of CERTIORARI for quashing the letter dated 29.11.2011 issued under the signature of respondent no. 5 and contained in his Memo No. 1347 dated 29.11.2011, whereby and whereunder the respondent no. 5 was pleased to cancel the P.D.S. License of the petitioner for violation of the provision of the Public Distribution System Control Order, 2001.

(iii) For issuance of any other writ/writs, order/orders, direction/directions for which the writ petitioner would be found entitled under the facts and circumstances of the case.”

3. Learned counsel for the petitioner submits that an insufficient opportunity of three days was granted for filing show cause and the impugned order has been passed as the petitioner was unable to file the show cause within the stipulated time. In fact, there is nothing on the record to indicate that the show cause notice had been served on the petitioner. It is submitted that the petitioner's case is squarely covered by a decision of this Court in the case of *Smt. Fulpati Devi Vs. The State of Bihar, 2013(1) PLJR 718*, wherein it has been observed as follows –

“3. Learned counsel for the petitioner submits that the petitioner could not know about the notice as she was ill during the period. Hence, she did not file show cause and in her absence the Sub-Divisional Officer passed the impugned order cancelling her licence. He also



submits that in appeal petitioner had brought this issue as ground no. (B) in the memo of appeal but the Collector has not considered the same and has brushed aside the ground taken by the petitioner and held that the ground of illness taken by the petitioner appears to be 'Post Thought'. He submits that illness or no illness, only three days time was allowed by the Sub-Divisional Officer, which was very short, and thereafter, he passed final orders within one week, without ensuring that notice was served on her.

4. Learned counsel for the petitioner appears to be correct. From the impugned order of the Sub-Divisional Officer also it does not appear that he has take care to ascertain service of notice was affected on the petitioner or not. The fact that after issue of notice on 16th of November, 2011 he passed final orders on 22nd of November, 2011 without mentioning in his order that the notice had been served on the petitioner, shows that he acted in hot haste."

4. In the above view of the matter, the impugned order dated 29.11.2011 (Annexure-5) and the appellate order dated 30.07.2013 (Annexure-7) are hereby set aside and the matter is remanded to the Sub-Divisional Officer, Muzaffarpur West, District-Muzaffarpur (respondent no. 5) to take a fresh decision in the matter after grant of reasonable opportunity of hearing to the petitioner in accordance with law. Supplies to the petitioner shall be restored without delay until fresh orders are passed by the respondent no. 5.



5. The writ petition stands allowed as above.

(Vikash Jain, J)

Md. Ibrarul/BT

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	17.07.2018
Transmission Date	N.A.

