

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6116 of 2014

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Ram Nandan Paswan (Secretary Harijan Utthan Samiti, Dalishamanchak Bhetgaon) son of Late Jagdish Singh Resident Of Village- Bhetgaon, P.S.- Barh, District- Patna

.... Petitioner

Versus

1. The State Of Bihar through the Secretary, Food and Supply Dept., Govt. Of Bihar, Patna
2. The Collector-cum-District Magistrate, Patna
3. The Sub-Divisional Officer (Supply), Barh
4. The Assistant District Supply Officer, Barh
5. The Block Supply Officer, Barh

.... Respondents

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Appearance :

For the Petitioner : Mr. Dhananjay Nath Tiwari,
Mr. Mahendra Prasad Verma, Advocates

For the Respondents : Mr. Rajiv Roy, GP 1

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 26-07-2018

I.A. No. 5385 of 2018

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. 222/Aa dated 26.03.2012 (Anenxure-4) passed by learned Sub Divisional Officer, Barh 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.



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3. The main writ petition has been filed for setting aside the appellate order dated 02.01.2014 passed by learned Collector-cum-District Magistrate, Patna in E.C. Appeal No. 19/2012-13 as well as for quashing the impugned order dated 14.07.2012 passed by the S.D.O. (Supply), Barh whereby and whereunder Licence No. 64/2007 of the petitioner for running PDS shop has been cancelled; and for connected reliefs.

4. Learned counsel for the petitioner assails the impugned order of cancellation of his PDS licence on the ground 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 revision against the order of the Collector being available, which has however not been availed of by the



petitioner.

6. 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 his case against the proposed cancellation.

7. A perusal of the show cause notice in memo no. 222/Aa dated 26.03.2012 (Annexure-4) 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).

8. The appellate order dated 02.01.2014 passed by learned Collector-cum-District Magistrate, Patna in E.C. Appeal No. 19/2012-13 as well as the impugned order dated 14.07.2012 passed by the S.D.O. (Supply), Barh are hereby quashed and the matter remanded to the Sub-Divisional Officer (Supply), Barh 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. Licence of the petitioner shall be restored without delay until fresh orders are passed by the Respondent no. 3.

9. The writ petition stands allowed as above.

(Vikash Jain, J)

B.T/Chandran

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	30.07.2018
Transmission Date	N.A.

