

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12487 of 2015

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Radheshyam Das, Son of Sri Sudin Das, Resident of Muhalla - Anand Colony,
Ward No. 12, Post, P.S. and District - Banka.

.... Petitioner

Versus

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

.... Respondents

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Appearance :

For the Petitioner : Mr. Rajeev Kumar Labh, Advocate

For the Respondents : Mr. M.K. Sinha- SC1

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 30-04-2018

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

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

*“(A) A Certiorari for quashing and setting aside the order passed by the Sub-Divisional Officer, Banka vide Memo No. 863 dated 26/5/2015 contained in **Annexure-1** whereby and whereunder licence of the petitioner’s Fair Price Shop bearing No. 01/2008 has been cancelled.*

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

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



3. Learned counsel for the petitioner submits that an insufficient opportunity of 24 hours 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 26.05.2015 (Annexure-1) is hereby set aside and the matter is remanded to the Sub-Divisional Officer, Banka, District Banka (respondent no. 3) to take a fresh decision in the matter after grant of reasonable opportunity of hearing to the petitioner in accordance with law.

5. The writ petition stands allowed.

(Vikash Jain, J)

B.T/-

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

