

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11134 of 2016

Afsana Begam, wife of Nizamuddin, resident of Village- Kanhariya, P.S.-
Dagarua, District- Purnea ... Petitioner

Versus

1. The State of Bihar through Collector, Purnea.
 2. The S.D.O., Baisee, Purnea.
 3. The B.S.O., Dagarua, Purnea ... Respondents
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Appearance :

For the Petitioner : Mr. Vijay Anand, Adv.
For the Respondents : Mr. Arvind Kumar-2, SC, XVII

CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL ORDER

3 27-08-2018 Heard the learned counsel for the petitioner and the learned
counsel appearing for the State.

The petitioner challenges the order cancelling her licence by
the respondent no. 2, the Subdivisional Officer, Baisee, Purnea,
whereby the PDS licence of the petitioner being Licence No. 1 of 2009
has been cancelled.

Petitioner had earlier moved this Court in C.W.J.C. No. 691
of 2016 against the order, dated 22.09.2015, contained in Annexure 4,
by which, as a consequence of lodging of first information report
being Dagarua P.S. Case No. 205 of 2015, dated 12.09.2015, the
licence of the petitioner was tagged along with another PDS dealer,
Durga Prasad Sah, bearing PDS Licence No. 29 of 2007, which was
challenged before this Court and this Court found the order, dated
22.09.2015, to be non-sustainable under Clause 7 (ii) of the Public
Distribution System (Control) Order, 2001, hence, the writ application
was allowed on 30.03.2016 and a direction was given for allocation of
supplies to be restored to the petitioner.



Learned counsel for the petitioner submits that on 21.03.2016, i.e., before earlier writ application was allowed by this Court on 30.03.2016, the Subdivisional Officer, Baisee, Purnea, has passed an order, as contained in Annexure 5, cancelling the PDS licence of the petitioner. Petitioner by Interlocutory Application No. 6458 of 2018 has filed the show cause notice, dated 14.09.2015, as contained in Annexure 6, by which the show cause notice postulating two days time to reply has also been challenged.

Considering the nature of prayer, made in the interlocutory application, the same is allowed.

Learned counsel for the petitioner submits that the show cause notice does not propose cancellation of licence which is a mandatory requirement under Clause 7 (ii) of the Public Distribution System (Control) Order, 2001, and it postulates only two days' time to file reply which is clearly insufficient as held in the case of **Smt. Fulpati Devi Vrs. State of Bihar & Ors.** since reported in **2013(1) P.L.J.R., 718**. He, further, submits that merely because a first information report has been lodged against the petitioner and allegation of black marketing has been alleged would not be a ground for cancellation of his licence, more so, when the petitioner has already been granted the privilege of pre-arrest bail.

Learned counsel for the State, however, submits that the



Licensing Authority has passed a reasoned and speaking order considering all the facts and circumstances, including the report submitted by the Block Supply Officer, Dagarua. He submits that there is a provision of appeal under the Control Order and in stead of exhausting alternative remedy of appeal and revision before the Divisional Commissioner, Purnea Division, the extra ordinary jurisdiction under Article 226 of the Constitution has been invoked, hence, the writ is not maintainable.

Considering the rival submissions of the parties, show cause notice, dated 14.09.2015, does not propose cancellation of licence, which is a mandatory requirement under Clause 7(ii) of the Public Distribution System (Control) Order, 2001, and two days' notice has been given to file reply thereto is clearly insufficient as held in the case of **Smt. Fulpati Devi** (supra). Simply lodging of first information report and without service of report submitted by the Block Supply Officer as stated in paragraph 28 of the counter affidavit vitiates the process for cancellation as it is in violation of the principles of natural justice. Hence, the show cause notice, dated 14.09.2015, as contained in Annexure 6, is quashed. The order of cancellation of licence, dated 21.06.2016, issued by the Licensing Authority, i.e., respondent no. 2, the Subdivisional Officer, Baisee, Purnea, is also quashed. It may be noted that the order, dated



22.09.2015, by which the consumers under the licence of the petitioner has been tagged with the another PDS dealer, namely, Durga Prasad Sah, having licence no. 29 of 2007 has been quashed by this Court in C.W.J.C. No. 691 of 2016, dated 30.03.2016. Supplies to the petitioner be restored forthwith.

Writ application is **allowed** as above.

(Nilu Agrawal, J)

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