

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12946 of 2015

=====

Sheo Narayan Paswan, Son of Musafir Paswan, resident of village- Sohraiya,
P.S.- Parasbigha, District - Jehanabad

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Food & Consumer Protection Department, Bihar, Patna
2. The District Magistrate-cum-Collector, Jehanabad
3. The Sub-Divisional Officer, Jehanabad
4. The Block Supply Officer, Ratnifaridpur, Jehanabad

.... Respondents

=====

Appearance :

For the Petitioner : Mr. N.K. Agrawal, Sr. Advocate
Mr. Dhananjaya Nath Tiwari
Miss Preety Kunwar, Advocates

For the Respondents : Mr. Indradeo Prasad, SC 27

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 25-08-2018

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

2. The present writ petition has been filed for quashing of the order contained in memo no. IV-374/2013-37/Aapurti dated 08.01.2014 passed by learned Sub-Divisional Officer, Jehanabad whereby the licence of the petitioner to run the public distribution shop being license no. 02/2010 has been cancelled; and further for setting aside the order dated 31.01.2015 passed in Supply Appeal Case No. 12/DM/2014 by learned Collector, Jehanabad by which he rejected the appeal and affirmed the order of learned licensing authority.



3. 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 action for cancellation of the licence which is a mandatory requirement in terms of Clause 7(ii) of the Bihar Fair Price Shop Order, 2007. It is submitted that the notices dated 03.10.2013 and 26.12.2013 at best state that proceedings for cancellation of the licence would be taken and do not amount to notice for proposed cancellation. Reliance is placed on a decision of this Court in *Prasauni Khirodhar Primary Agriculture Co-operative Society Ltd. & Ors Vs. The State of Bihar and others, 2015(3) PLJR 189*.

4. Learned counsel for the respondents appears and has been heard. He submits that remedy by way of revision before the Divisional Commissioner is available to the petitioner against the impugned order, which has not been availed of by the petitioner.

5. 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 or her case against the proposed cancellation.



6. The appellate order dated 31.01.2015 passed in Supply Appeal Case No. 12/DM/2014 (Annexure-7) and the impugned order contained in memo no. IV-374/2013-37/Aapurti dated 08.01.2014 (Annexure-6) are hereby quashed and the matter remanded to the Sub-Divisional Officer, Jehanabad (respondent no. 3) for passing orders afresh after granting an opportunity of hearing to the petitioner in accordance with law. Licence of the petitioner shall be restored without delay until fresh orders are passed by the respondent no. 3.

7. The writ petition stands allowed as above.

(Vikash Jain, J)

B.T/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	04.09.2018
Transmission Date	N.A.

