

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11029 of 2017

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Smt. Niro Devi, Wife of Sri Pradeep Paswan, resident of Village- Madhopur,
P.O.- Banauli, P.S.- Simri, District- Darbhanga.

.... Petitioner

Versus

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

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Rajeev Kumar Labh, Adv

For the Respondent/s : Mr. ARVIND UJJWAL-SC4

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 18-01-2018

The present writ petition has been filed for the following
reliefs :-

- (i) *A certiorari for quashing and setting aside the order passed by the Sub-divisional Officer, Sadar, Darbhanga vide Memo No. 381 dated 16.06.2017 whereby and whereunder licence of the petitioner's Fair Price Shop bearing No. 42 of 2016 has been cancelled contained in Annexure-1.*
- (ii) *A mandamus commanding the respondents to restore the petitioner's licence as before and to make allotment for the petitioner's shop.*
- (iii) *Any other relief or reliefs for which the petitioner may be found entitled in the facts and circumstances of the present case may be granted to him.*

2. Learned counsel for the petitioner assails the impugned



order of cancellation of his PDS licence on two grounds; firstly that copy of the enquiry report was not made available to the petitioner prior to passing of the order of cancellation; and secondly 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.

3. Learned counsel for the respondents appears and has been heard. The stand of the petitioner with regard to non-supply of enquiry report has not been controverted, as no counter affidavit has been filed till date.

4. Having heard learned counsel for the parties and on consideration of the materials on record, this Court is of the view that non-supply of the enquiry report to the petitioner has resulted in violation of natural justice and thus the decision making process stands vitiated.

5. This Court is also of the view that the bar of alterative 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 its case against the proposed cancellation.

6. A perusal of the show cause notice in memo no. 381 dated 16.06.2017 (Annexure-1) 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*).

7. The impugned order dated 16.06.2017 (Anenxure-1) is hereby quashed and the matter remanded to the Sub-Divisional Officer,



Sadar, Darbhanga 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. Supplies to the petitioner shall be restored without delay until fresh orders are passed by the Respondent no. 3.

8. The writ petition stands allowed as above.

(Vikash Jain, J)

Chandran/BT

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.01.2018
Transmission Date	NA

