

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.7245 of 2018**

=====

Sanjay Kumar, S/o Late Surendra Baitha, Resident of Bamauli Bujurg, P.S.-  
Paliganj, District- Patna.

.... .... Petitioner

Versus

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

.... .... Respondents

=====

**Appearance :**

For the Petitioner : Mr. Anujit Sinha, Advocate.  
For the Respondents : Mr. Arvind Ujjwal, SC-4

=====

**CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN**

ORAL JUDGMENT

**Date: 18-04-2018**

Heard learned counsel for the petitioner and learned  
counsel for the respondents.

2. The present writ petition has been filed for setting  
aside the order dated 02.04.2018 contained in Memo No. 112/Aa  
passed by learned Sub-Divisional Officer, Paliganj by which the license  
of the petitioner has been cancelled.

3. Learned counsel for the petitioner submits that  
insufficient opportunity of only three days 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. 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. It is further submitted 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. In the above view of the matter, the impugned order contained in Memo No. 112/Aa dated 02.04.2018 passed by the Sub Divisional Officer, Paliganj, Patna (Annexure-3) is hereby set aside and the matter is remanded to the Sub-Divisional Officer, Paliganj, Patna (respondent no. 3) to issue an appropriate show cause notice and take a fresh decision in the matter after grant of reasonable opportunity of hearing to the petitioner in accordance with law. Supplies to the petitioner shall be restored without delay until fresh orders are passed by the respondent no. 3.

6. The writ petition stands allowed.

**(Vikash Jain, J)**

Md. Ibrarul/BT

|                   |            |
|-------------------|------------|
| AFR/NAFR          | NAFR       |
| CAV DATE          | N.A.       |
| Uploading Date    | 02.05.2018 |
| Transmission Date | N.A.       |

