

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2049 of 2017

=====

Kishun Ram, S/o Late Sukhdeo Ram, Resident of Village- Pirauta, P.S.- Ara
Muffasil, District- Bhojpur at Ara.

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Food & Consumer Protection Department, Bihar, Patna.
2. The Collector, Bhojpur at Ara.
3. The Sub-Divisional Officer, Sadar, Ara.
4. The Block Supply Officer, Sadar, Ara.

.... Respondents

=====

Appearance :

For the Petitioner	:	Mr. N.K. Agrawal, Sr. Advocate. Mr. Dhananjaya Nath Tiwari, Advocate.
For the State	:	Mr. Sushil Kumar Mallick, AC to SC-4 Mr. Upendra Pratap Singh, AC to SC-4

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 13-07-2018

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

2. The present writ petition has been filed for
quashing of the order contained in memo no. 3399 dated 31.12.2016
passed by the learned Sub-Divisional Officer, Sadar, Ara whereby the
license of the petitioner being license no. 20/2007 has been cancelled.

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 notice dated 07.09.2016 as well as dated 28.09.2016 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 appeal before the District Magistrate 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 starting his or her case against the proposed cancellation.

6. The impugned order contained in Memo No. 3399 dated 31.12.2016 (Annexure-4) is hereby quashed and the matter remanded to the Sub-Divisional Officer, Sadar, Ara for passing orders



after granting an 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.

7. The writ petition stands allowed as above.

(Vikash Jain, J)

Md. Ibrarul/BT

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	18.07.2018
Transmission Date	N.A.

