

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7218 of 2016

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Most. Jinat Khatoon, W/o Late Ahmad Hussain, resident of Ward No. 16,
Muhalla - Mahadewa, District - Siwan

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Food and Civil Supplies,
Government of Bihar, Patna
2. Secretary, Food and Civil Supplies, Government of Bihar, Patna
3. Commissioner, Saran Division, Chapra
4. District Magistrate - cum - Collector, Siwan
5. Sub - Divisional Officer, Siwan

.... Respondents

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Appearance :

For the Petitioner : Mr. Ashish Giri

Mr. Sumit Kr. Jha,

Mr. Rajat Kr. Tiwary, Advocates

For the Respondents : Ms. Puspanjali Sharma, AC to SC 20

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 26-06-2018

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

2. The present writ petition has been filed for the following
reliefs –

“(i) To issue an appropriate writ/order/direction in the nature of Certiorari for quashing the order dated 23.11.2011 passed by the Sub-Divisional Officer, Siwan by which the Thela Vendor License of K. oil bearing no. 1103/07 dated 5.6.2007 issued to the petitioner by the respondent no. 5 under the Public Distribution System (Control) Order, 2001 (hereinafter referred to as the ‘Orders’) has been cancelled without following the principle of natural justice (as contained in Annexure -2)



(ii) To issue an appropriate writ/order/direction in the nature of Certiorari for quashing the order dated 17.07.2012 passed by the District Magistrate, Siwan in appeal case no. 02/12-13 by which the order of the Sub-Divisional Officer was upheld and the appeal was rejected (as contained in Annexure-4).

(iii) To issue an appropriate writ/order/direction in the nature of Certiorari for quashing the order dated 21.11.2015 passed by the Commissioner, Saran Division, Chapra in supply revision case no. 258/2012 by which the order of the Sub-Divisional Officer and District Magistrate, Siwan was upheld and the appeal was rejected (as contained in Annexure-6).

(iv) To issue an appropriate writ of mandamus commanding the respondents to restore the Thela Vendor license of K. oil bearing 1103/07 under the PDS scheme in the district of Siwan to the petitioner forthwith.

(v) To any other relief or reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case."

3. Learned counsel for the petitioner submits that the impugned order dated 23.11.2011 cancelling the petitioner's PDS licence has been passed by the Sub-Divisional Officer, Siwan Sadar on the footing that the show cause notice had been refused to be received by the petitioner. An appeal against the cancellation order was filed specifically stating that the show cause notice was never served and no opportunity was granted in that regard prior to passing of the



cancellation order.

4. Neither any finding has been recorded by the appellate authority in this regard nor records examined to verify the service report with regard to alleged refusal to accept show cause notice. Further revision before the Commissioner has also met with the same fate. It is therefore submitted that it was incumbent upon the authorities first to verify whether or not there was refusal on the part of the petitioner to receive the show cause notice, before affirming the impugned order of cancellation passed against the petitioner.

5. Learned counsel for the respondents appears and has been heard. He refers to the statement made in paragraph 4 of the counter affidavit to submit that the petitioner had refused to receive the show cause notice when tendered by the office peon.

6. Having heard learned counsel for the parties and on careful consideration of the materials available on record, this Court finds merit in the writ petition. A specific plea has been taken by the petitioner that no proper opportunity has been granted prior to passing of the cancellation order by the Sub-Divisional Officer. The authorities were at least required to bring on record at some stage the relevant materials available whether by way of service report, or otherwise, to substantiate the bald assertion that the petitioner had refused to accept service of notice when tendered by the office peon.



This Court is therefore not inclined to accept the plea of the respondents. Failure to validly serve a show cause notice on the petitioner vitiates the impugned order of cancellation passed by the Sub-Divisional Officer and as a consequence also of the appellate authority and the revisional authority, which are hereby quashed. The matter is remitted to the Sub-Divisional Officer, Siwan Sadar to issue a fresh show cause notice and serve the same on the petitioner before passing fresh orders in accordance with law.

7. The writ petition stands allowed as above.

(Vikash Jain, J)

B.T/Chandran

AFR/NAFR	NAFR
CAV DATE	N.A.
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