

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16103 of 2016

=====

Banarsi Prasad S/o Late Jagdish Ram resident of Village - Kadirganj, P.S. - Kadirganj, District - Nawada.

.... Petitioner

Versus

1. The State of Bihar through the Secretary Food & Civil Supply Department, Old Secretariat, Patna, Bihar.
2. The Collector, Nawada.
3. The Sub Divisional Officer, Sadar, Nawada.
4. The Additional District Supply Officer, Nawada.

.... Respondents

=====

Appearance :

For the Petitioner : Mr. Vijay Anand, Adv

For the Respondents : Mr. Santosh Kumar Mishra, AC to GP 9

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 12-02-2018

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

2. I.A. No. 1095 of 2018 has been filed for adding a prayer to challenge the show cause notice dated 01.08.2016 issued by the Sub Divisional Officer, Sadar, Nawada contained in Memo No. 90.

3. Having regard to the nature of the prayer, I.A. No. 1095 of 2018 stands allowed and the petitioner is permitted to make necessary amendment in the prayer portion of the writ petition in course of the day.

CWJC No. 16103 of 2016

4. The main writ petition has been filed for setting aside the order dated 31.08.2016 issued under Memo No. 296/Sub-Division Office passed by S.D.O., Nawada by which the licence granted under the provisions of Fair Price Order and/or PDS order for carrying on the business of Fair Price Shop has been cancelled for alleged violation of the provisions of PDS Order, 2016.



5. 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 Bihar Targeted PDS Control Order, 2016. Reliance is placed on *Prasuani Khirodhar Primary Agriculture Co-operative Society Ltd. & Ors. vs. The State of Bihar and others, 2015(3) PLJR 189*.

6. Learned counsel for the respondents appears and has been heard.

7. 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.

8. This Court is also 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 Targeted PDS Control Order, 2016 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 case against the proposed cancellation.

9. A perusal of the show cause notice in memo no. 90 dated 01.08.2016 (Annexure-4) 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 Prasuani's case (*supra*).

10. The impugned orders dated 31.08.2016 (Annexure-3) and



dated 01.08.2016 (Annexure-4) issued by the Sub Divisional Officer, Sadar, Nawada, are hereby quashed and the matter remanded to the Sub-Divisional Officer, Sadar, Nawada 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.

11. The writ petition stands allowed as above.

Chandran/BT

(Vikash Jain, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.02.2018
Transmission Date	NA

