

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16647 of 2014

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Harishchandra Prasad Sah, S/o Late Anup Lal Sah, resident of village -
Harinmar, P.S. Bariyarpur, District – Munger

.... Petitioner

Versus

1. The State of Bihar through Secretary Food and Consumer Department
2. Collector, Munger
3. Sub - Divisional Officer, Munger
4. Block Supply officer, Bariyarpur, Munger

.... Respondents

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Appearance :

For the Petitioner : Mr. Rakesh Chandra, Advocate

For the Respondents : Mr. Birju Prasad, GP 13

Mr. Ashok Kumar, AC to GP 13

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 21-08-2018

I.A. No. 6227 of 2018

The interlocutory application has been filed for amendment
of the relevant portion of the prayer in the writ petition by adding the
following prayer –

*“That the letter No- 641 dt. 18.08.2011 issued by S.D.M.
Munger may kindly be quashed by which the PDS
dealership of the petitioner was cancelled.”*

2. Having regard to the nature of the prayer, the
interlocutory application is allowed and the same shall be treated as



forming part of the writ petition.

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3. The main writ petition has been filed for quashing the letter dated 16.07.2011 and 29.07.2011 (Annexure-1 series) issued by the Sub-Divisional Officer, Munger (respondent no. 3) by which the license of the petitioner for public distribution system has been suspended and then cancelled.

4. Learned counsel for the petitioner submits that the impugned order of suspension has been passed contrary to the provisions of the Public Distribution System (Control) Order, 2001 as amended with effect from 23.06.2011. So also, the impugned order of cancellation is wholly arbitrary and unsustainable as the same has been passed without service of any notice upon the petitioner whatsoever. Moreover, the PDS licence of the petitioner could not have been cancelled merely on the ground of institution of the first information report.

5. Learned counsel for the State submits that the notice was duly served on the brother of the petitioner and as such, the order of cancellation suffers from no infirmity.

6. In reply, learned counsel for the petitioner submits that the petitioner and his brother had been living separately for the last 25 years and as such, service of notice upon the brother of the



petitioner does not amount to valid service of notice on the petitioner.

7. Having heard learned counsel for the parties and on careful consideration of the materials available on record, this Court finds substance in the submissions of learned counsel for the petitioner. Learned counsel for the respondents has not been able to bring any material on record to controvert the stand of the petitioner that he was living separately from his brother for the last 25 years nor that the petitioner in fact had knowledge of the show cause notice. In the circumstances, therefore, the impugned order of cancellation has clearly been passed in violation of the principles of natural justice.

8. It is also not in dispute that the licence of the petitioner has been cancelled on the sole ground that an FIR has been instituted against the petitioner. It is well settled that mere institution of a first information report would not constitute a valid ground for cancellation of the PDS licence as held in *Umesh Ram Vs. The State of Bihar and others*, AIR 2014 Patna 113. In the above view of the matter, the impugned order of cancellation dated 29.07.2011 is hereby quashed.

9. As regards the order of suspension dated 16.07.2011, the same appears to be de hors the provisions of para 7 of the PDS (Control) Order, 2001 as amended with effect from 23.06.2011, consequent upon which the provision for suspension of licence no longer subsists. The order of suspension dated 16.07.2011 also



accordingly stands quashed.

10. The writ petition stands allowed.

(Vikash Jain, J)

B.T/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	04.09.2018
Transmission Date	N.A.

