

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1136 of 2019

Shiv Shankar Saw, Gender – Male, Aged about 53 years, son of
Late Sakhichandra Saw, resident of village – Mayapur, P.S. -
Daudnagar, District – Aurangabad.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Food and
Consumer Protection Department, Old Secretariat, Patna.
2. The District Magistrate, District – Aurangabad.
3. The Sub-Divisional Officer, Daudnagar, District – Aurangabad.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Rajeev Kumar Labh, Advocate
For the Respondent/s : Mr. Alok Ranjan, AC to AAG-5

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

- 3. 29-01-2019** Heard learned counsel for the petitioner and learned
counsel representing the State.

On the last date the matter was adjourned for two
weeks to enable learned counsel for the State to file a counter
affidavit. It however appears that the counter affidavit has not
been filed.

The basic contention of the learned counsel
representing the petitioner is that on a bare perusal of Annexure-
1 as contained in Memo No. 02 dated 16.06.2017 issued under
the signature of Sub-Divisional Officer, Daudnagar, it would
appear that the show cause issued by him was not proposing
cancellation of the license. It is submitted that if no show cause
proposing cancellation of license was issued in terms of Rule 27



of the Bihar Targeted P.D.S. (Control) Order, 2016 (hereinafter referred to as the 'Control Order, 2016'), the impugned order, by which the license of the petitioner has been cancelled, would be liable to be held bad in law.

Learned counsel submits that even the appellate authority has failed to appreciate the contention of the petitioner.

Learned counsel for the State is present, however Annexure-1 to the writ application is very clear. It shows that while suspending the license of the petitioner the Sub-Divisional Officer had called upon him to submit a show cause on the charges levelled against him. There was no show cause proposing cancellation of license. Rule 27 of the Control Order, 2016 reads as under:

“27. Cancellation of License - (I) If a licensee violates any provision of this Order or fails to comply duties and responsibilities assigned to the license, his license shall be cancelled by the licensing authority by a written order, and such a cancellation of license shall not affect other actions initiated/initiable under the Essential Commodity Act, 1955 (Central Act 10 of 1955).

(ii) No order of cancellation of license shall be made until the licensee has been



given sufficient opportunity to state his case against the proposal of cancellation of his license.

(iii) The cases of violation of the provisions of this Order shall be disposed of within two months, as far as possible, after coming in cognizance as for.”

In several judicial pronouncements, this court has held that cancellation of license cannot be done without complying with the provisions of Clause (ii) of Rule 27 of the Control Order, 2016.

On the face of the clear violation of aforesaid mandatory provision, the impugned order as contained in Memo No. 51 dated 06.09.2017 (Annexure-1 series) and the appellate order as contained in Annexure-4 are hereby set aside.

The Sub-Divisional Officer, Daudnagar, district – Aurangabad will be at liberty to take further steps in accordance with law, if so desired.

This writ application is allowed to the extent indicated hereinabove.

Rajeev/-

(Rajeev Ranjan Prasad, J)

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