

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4656 of 2019

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Nandjee Paswan Son of Late Ram Prit Ram, Resident of Village/Mohalla-Dahiyari, P.O.-Sikariya and P.S.-Karakat, District-Rohtas (Sasaram)

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary, Food and Civil Supply Department, Govt. of Bihar, Patna.
2. Principal Secretary, Civil Supply Department, Govt. of Bihar, Patna.
3. District Magistrate cum Collector, Rohtas at Sasaram.
4. Sub-Divisional Officer, Bikramganj, District-Rohtas.
5. District Supply Officer, Rohtas at Sasaram.
6. Block Supply Officer, Karakat, District-Rohtas.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Pramod Kumar, Advocate
For the Respondent/s : Mr.Arvind Ujjwal (Sc4)

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 24-07-2019 Heard learned counsel for the petitioner and learned counsel representing the State.

Petitioner in the present case is seeking to challenge the order dated 06.07.2018 passed by the Collector, Rohtas (Sasaram) in Supply Appeal No. 4 of 2014 as contained in Annexure '5' to the writ application by which the appeal preferred by the petitioner against the order dated 07.07.2014 passed by the Sub-Divisional Officer, Bikramganj has been dismissed.

The Sub-Divisional Officer, Bikramganj had served a show cause notice dated 24.01.2014 (Annexure '1') upon the



petitioner calling upon him to explain the allegations made against him. Three days time was granted for filing explanation, failing which the allegations were to be taken as true and the Sub-Divisional Officer, Bikramganj had made it clear that he will proceed further in accordance with law.

Petitioner submitted his reply denying the allegations but thereafter the license of the Fair Price Shop of the petitioner was cancelled giving various reasons. The said order was challenged in appeal but then the appellate authority also dismissed the same affirming the decision of the licensing authority. Learned counsel for the petitioner has raised the submission stating that in terms of Clause 11(2) of the Bihar Trade Articles (Licenses Unification) Order, 1984 (hereinafter referred to as the 'Unification Order, 1984') under which the impugned action was taken at the relevant time, it was mandatory for the licensing authority to serve a show cause notice proposing cancellation of the license of the petitioner. It is submitted that Annexure '1' to the writ application is not a show cause notice in terms of Clause 11(2) of the Unification Order, 1984, therefore, the licensing authority has exercised its power to cancel the license without following the statutory provision which has vitiated the entire order.



Reliance in this regard has been placed upon a judgment passed by a learned Co-ordinate Bench of this Court in the case of **Ram Eqbal Roy vs. The State of Bihar and others** reported in **2012 (3) PLJR 203** (Annexure '6'). It is submitted that it has been the consistent view of this Court that non observance of the provision under Clause 11(2) of the Unification Order, 1984 would render the impugned order illegal and the same would be liable to be quashed.

Learned counsel for the State is present, however, considering the facts and circumstances of the case and what is apparent from the records particularly Annexure '1' to the writ application, learned counsel for the State submits that the matter may be remitted to the Sub-Divisional Officer, Bikramganj, (Rohtas) for a fresh consideration and action in accordance with with law.

Having heard learned counsel for the petitioner and the State as also on perusal of the records it appears to this Court that in show cause notice as contained in Annexure '1' there was no proposal of cancellation of license, therefore, when the licensing authority contemplated cancellation of license he was required to serve a show cause notice proposing cancellation upon the petitioner. This was the requirement of



Clause 11(2) of the Unification Order, 1984. In a some what similar circumstance when this issue was raised in the case of **Ram Ekbal Roy** (supra), the learned Co-ordinate Bench of this Court held as under :-

“9. From sub-clause (1) of Clause 11, it appears that the licence of the petitioner can either be cancelled or suspended with regard to one or more trade articles if he contravenes any of the terms and conditions of the licence. Therefore, even if there is contravention of the terms of license with regard to one or more articles there may be situation where a licence could either be cancelled or suspended only with regard to those articles. In that case, the licence would survive for remaining articles. From reading of sub clause (2) of Clause 11, it would appear that the no cancellation order can be passed unless the licensee has been given a reasonable opportunity stating his case against the proposed cancellation. However, during the pendency or in contemplation of proceedings of cancellation of licence, the licence can be suspended for a period not exceeding 90 days without giving any opportunity to the licensee for stating his case. Such suspension shall be limited only to those trade articles regarding which contravention has been made by the licensee. It is admitted position that the order of suspension, as contained in Annexure-1, itself includes a notice to the petitioner to the show cause. It is also admitted that no other show cause notice has been issued to him. From perusal of the show cause notice, in the opinion of this Court, it does not appear that the same has been issued in contemplation of a proceeding of cancellation of his licence. If



suspension is, as submitted by learned counsel, under sub clause (2) of Clause 11, *i.e.*, in a proceeding for proposed cancellation of a licence that is not reflected from Annexure-1. Annexure-1 does not disclose that there was a proceeding for cancellation of licence in which a show cause notice was issued and in that proceeding itself an order of suspension has been passed. Thus, the submission raised on behalf of the State would have to be rejected in this regard. Thus, I hold that from the notice, as contained in Annexure-1, it does not appear that the same was issued in contemplation of any proceeding proposing cancellation of his licence and for the same there would be no difficulty for this Court in following the decision of this Court rendered in **Paspat Prasad** (supra).”

In the facts of this case and in view of the judgment of this Court, this court would have no hesitation in recording that the impugned orders suffer from violation of the mandatory statutory provision of Clause 11(2) of the Unification Order, 1984 and therefore, both the orders are liable to be set aside accordingly Annexure ‘4’ and ‘5’ to the writ application are set aside. The matter is remitted to the office of the Sub-Divisional Officer, Bikramganj (Rohtas) for a fresh consideration of the matter after giving a proper show cause in terms of sub clause (2) of Clause 11 of the Unification Order, 1984 which was then in force and the same provision is presently available under Clause 27(ii) of the Bihar Targeted P.D.S. (Control) Order, 2016.



Let the whole exercise be completed within a period of 90 days from the date of receipt/production of a copy of this order. By virtue of setting aside of the impugned orders, if the vacancy of the shop in question still exists, the license of the petitioner and supply shall stand restored which will be subject to the decision of the licensing authority.

(Rajeev Ranjan Prasad, J)

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