

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21151 of 2018

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Umesh Prasad Yadav Son of Shiv Shankar Yadav, Resident of Village-
Dedhuar, P.S.- Andhatharhi, District- Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Food and Consumer Protection Department, Government of Bihar, Patna.
2. The District Magistrate, Madhubani.
3. The Sub Divisional Officer, Jhanjharpur, District- Madhubani.
4. The Block Supply Officer, Andhratharhi, District- Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Manoj Kumar Jha
For the Respondent/s : Mr.S. Raza Ahmad- Aag5

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 27-07-2019 Heard learned counsel for the petitioner and the

learned counsel representing the State.

In this case earlier on 27.11.2018 the respondents
were directed to file counter affidavit within four weeks but no
counter affidavit has been filed so far.

The Petitioner is aggrieved by the order dated
27.08.2018 as contained in Annexure '5' to the writ application
by which the Public Distribution Shop License of the petitioner
has been cancelled on two grounds: firstly, that he has shifted
the premises of the shop without seeking permission from the
licensing authority and secondly, that the petitioner was not
issuing cash memos of Kerosene Oil distribution to the



beneficiaries.

Learned counsel for the petitioner submits that so far as the first ground that the petitioner had shifted the shop premises is concerned, the petitioner has explained in his show cause that it was the month of August and only because of the rainy season, in order to save the food grains from getting damaged, he had been using additional premises which was also his own premises. Further in course of inspection the foodgrains kept in the store were found in accordance with the stock register. This fact is duly mentioned in the show cause notice of the Block Supply Officer, Andhratharhi (Annexure '2'). It is thus, submitted that if the petitioner had shifted the foodgrains in order to save them from getting damaged, it was in accordance with Clause 17 which permits the licensee to keep the foodgrains in a suitable condition and in order to save them from getting damaged, the licensee is permitted to take necessary measures.

As regards, the second ground, learned counsel for the petitioner submits that this is an additional ground taken in the impugned order as the same was not the allegation mentioned in the show cause notice (Annexure '2') and the petitioner had no opportunity to reply the same.



Learned counsel for the State is present and has though attempted to defend the impugned orders but no counter affidavit has been filed on behalf of State-respondents despite lapse of about nine months and that it is apparent from the records that the explanation of the petitioner has not been duly considered as also an additional ground has been taken to pass the impugned order, he is unable to satisfy the Court with the correctness of the impugned order.

In the given facts and circumstances of the case, the Court finds that the licensing authority has failed to take into consideration the explanation of the petitioner keeping in mind that the Clause 17 of the License and further the positive statement made in the show cause notice (Annexure '2') that the stock of the petitioner was found in accordance with the stock register at the time of inspection. The Court also finds that the additional ground which has been taken to cancel the license was not there in the show cause notice. For these reasons, the impugned order is hereby set aside.

License and supplies of the petitioner stands restored.

The present writ application is allowed.

(Rajeev Ranjan Prasad, J)

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