

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3851 of 2020

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Avinash Kumar Son of Ram Uchit Sah Resident of Village- Raghopur, P.S.-
Chiraiya, District- East Champaran at Motihari.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Food and Consumer Protection, Bihar, Patna.
2. The District Magistrate, East Champaran (Motihari).
3. The Sub Divisional Officer, Sikarahna, Dhaka, District- East Champaran (Motihari).
4. The District Supply Officer, East Champaran (Motihari).
5. The Block Supply Officer, Chiraiya, District- East Champaran (Motihari).
6. The Block Welfare Officer, Dhaka, District- East Champaran (Motihari).

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ajay Kumar Sinha Mr. Sumit Kumar Singh
For the Respondent/s	:	Mr.Arvind Ujjwal (SC-4) Mr. Maruti Nath Roy, A.C. to S.C.-4

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

2 19-02-2020 Heard the learned counsel for the petitioner and the
learned counsel for the respondents.

The present writ petition has been filed for quashing
the order dated 16.09.2019 passed by the Sub-Divisional
Officer, Sikarahna, Dhaka, District-East Champaran, Motihari,
whereby and whereunder the license of the fair price shop of the
petitioner bearing License No. 15 of 2018, has been cancelled.

The learned counsel for the petitioner has submitted
that firstly; the show cause notice has been issued on account of



the petitioner being not present at his shop and the shop being closed for one day and; secondly only three days time has been granted to the petitioner to reply to the show cause notice, served on the petitioner, which has resulted in violation of the principles of natural justice inasmuch as by no stretch of imagination three days can be said to be sufficient time so as to enable the petitioner to put forth his defence in a reasonable manner.

Reference in this connection be had to judgments rendered by the learned Division Bench of this Court in the case of *Turant Lal Paswan vs. The State of Bihar & Ors.*, dated 22.06.2012, passed in CWJC No. 10213 of 2016 and the one reported in 2013(1) PLJR 718 (*Smt. Fulpati Devi vs. the State of Bihar & Ors.*).

At this juncture, it would be relevant to extract the relevant portion of the judgment rendered by the learned Division Bench in the case of Turant Lal Paswan vs. The State of Bihar & Ors. (supra), herein below:-

“The petitioner was the licensee of a fair price shop at Village-Maniyari, Block-Bahadurpur, District-Darbhangha granted under the 2007 Order. The licence granted to the petitioner has been cancelled on 26th April 2010 on the premise that at the time of spot inspection on 15th January 2010 the shop was



closed. The petitioner had closed the shop to attend to his ailing family member in the hospital. The order also reflects that the petitioner had a controversial and blotted history.

The petition is contested by the State Government. A counter affidavit has been filed. The affidavit on record does not disclose any untoward incidence in the past. The show cause notice was issued on 15th January 2010 in respect of as many as eight allegations made against the petitioner. However, only on one allegation of closing the shop on 15th January 2010 the order of cancellation of licence has been made.

We find that admittedly the petitioner did close the shop on the particular day. Though, the action of keeping the shop closed on one particular day was in breach of the terms and conditions of the licence and may not be justified, was not such grave violation that would entail cancellation of licence.

For the aforesaid reasons, this writ application is allowed. Order dated 26th April 2010 made by the Sub-divisional Officer, Sadar, Darbhanga is quashed and set aside. The legal consequences shall follow.”

This Court would further refer to paragraph nos. 4 & 5 of the judgment rendered by coordinate Bench of this Court in the case of Smt. Fulpati Devi (supra), herein below:-

“4. Learned counsel for the petitioner



appears to be correct. From the impugned order of the Sub-Divisional Officer also it does not appear that he has taken care to ascertain service of notice was affected on the petitioner or not. The fact that after issue of notice on 16th of November, 2011 he passed final orders on 22nd of November, 2011 without mentioning in his order that the notice had been served on the petitioner, shows that he acted in hot haste.

5. In the circumstances, appellate order of the Collector dated 5.5.2012 (Annexure-1) and the original order of the Sub-Divisional Officer contained in Memo No. 758 dated 22.11.2011 (Annexure-2) are quashed and the matter is remitted back to the Sub-Divisional Officer, Arwal to consider the representation of the petitioner, allow her to file further representation and thereafter, pass appropriate order afresh in accordance with law.”

Having regard to the facts and circumstances of the case, considering the submissions made by the learned counsel for the parties as also taking into account the judgments rendered in the case of Turant Lal Paswan (supra) and Smt. Fulpati Devi (supra), this Court finds that in the present case as well only three days' time was granted to the petitioner to file his show cause reply which is totally insufficient and moreover, the P.D.S. license of the shop has been cancelled on account of



one day closure of the shop, hence the present case is squarely covered by the judgments rendered by this Court in the case of Smt. Fulpati Devi (supra) and Turant Lal Paswan (supra). Thus, the order impugned dated 16.09.2019 passed by the Sub-Divisional Officer, Sikarahna, Dhaka, District-East Champaran, Motihari stands quashed, however, with liberty to the Sub-Divisional Officer, Sikarahna, Dhaka, District-East Champaran, Motihari to proceed further in the matter afresh, in accordance with law.

The writ petition stands allowed.

(Mohit Kumar Shah, J)

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