

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8350 of 2020

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Mithan Prasad Yadav Son of Jagadis Prasad Yadav, Resident of village- Bajra,
P.s.- Belhar, District- Banka

... .. Petitioner/s

Versus

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

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajeev Kumar Labh, Advocate
For the Respondent/s : Mr. Lala S.N. Rais, A.C. to G.P.-2

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

5 12-03-2021 Heard Mr. Rajeev Kumar Labh, learned counsel for

the petitioner and Mr. Lala S.N. Rais, learned A.C. to G.P.2,

appearing for the Respondents-State.

2. The present writ application has been filed for quashing the order passed by the Sub Divisional Officer, Banka (Respondent No.3) vide Memo No. 173 dated 8.6.2020 (Annexure-1) whereby the license of fair price shop of the petitioner has been cancelled.

3. The brief facts giving rise to the present writ application is that the petitioner is having a valid license bearing License No. 58/12 of fair price shop at Banka and was served with a show cause notice vide Memo No. 112 dated 30.4.2020 alleging therein that the fair price shop of the petitioner was



inspected by the licensing authority on 29.4.2020 and during inspection, the shop of the petitioner in question was found closed.

4. The petitioner submitted his reply to show cause stating the circumstances under which the shop of the petitioner was closed on that particular day. However, the licensing authority came to the conclusion that the reply submitted by the petitioner is not supported by any evidence and cancelled the PDS licence of the petitioner by the impugned order.

5. The sole ground raised by the petitioner is that cancellation of PDS shop due to one day closure, is completely arbitrary and disproportionate to the irregularities committed by the petitioner, and in support of the same, the petitioner places reliance upon the Division Bench Judgment of this Court rendered in **2012 (3) PLJR (Turant Lal Paswan Vrs. The State of Bihar & Ors.)** by which the Division Bench has expressed his view in following terms.

“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.”

6. On the other hand, learned counsel for the State referring to the counter affidavit submits that there is an alternative remedy available to the petitioner inasmuch as, as per Rule 32 (iii) of Bihar Targetted Public Distribution System (Control) Order, 2016, there is provision of appeal and petitioner may be relegated to the remedy of appeal.

7. I have heard learned counsel for the parties and have gone through the writ petition as well as counter affidavit. It appears that on the date of inspection, the PDS shop of the petitioner was found closed by the licensing authority and on that very ground, his license has been cancelled. From perusal of judgment in the case of Turant Lal Paswan (*supra*) relied upon by learned counsel for the petitioner, it is evident that Division Bench of this Court has held that keeping the shop closed on one particular day was in breach of the terms and conditions of the licence and may not be justified, but the same was not such grave violation that would entail cancellation of licence. Accordingly, punishment given to the petitioner by cancellation of his PDS licence, in my opinion, does not commensurate the offences/irregularities committed by him.

8. As such, this writ application is allowed and the



impugned order contained in Memo No. 112 dated 30.4.2020
(Annexure-1) is set aside and the licensing authority i.e.
Respondent No. 3 is directed to restore the PDS licence of the
petitioner with immediate effect.

(Anil Kumar Sinha, J)

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