

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7619 of 2020

Chhote Lal Singh Son of Late Tarni Singh, resident of Village - Bhandajor,
P.O.- Kosi, P.S. - Roh, District- Nawada, and presently residing in Mohalla -
New Area, Durga Mandap, Ward no. 6, Gondapur, P.S. /District- Nawada.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection Dept., Govt. of Bihar, Old Secretariat, Patna - 800015.
2. The District Magistrate, Nawada.
3. The Sub Divisional Officer, Rajauli, District- Nawada.
4. The Assistant District Supply Office, Nawada.
5. The Block Supply Officer, Roh, District - Nawada.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Sidhendra Narayan Singh, Advocate Mr. Kumar Lalit, Advocate
For the State	:	Mr. Kumar Alok, SC-7 Mr. Rakesh Kumar, AC to SC-7

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date : 28-01-2021

Heard learned counsel for the petitioner and learned counsel for the State. Learned counsel for the petitioner has filed an undertaking to remove all the defects pointed out by the Stamp Reporter as and when required. It is accordingly directed that all defects pointed out by the Stamp Reporter be removed within one month hereof.

2. The following reliefs as formulated by the petitioner have been claimed in the writ petition--

i. For quashing of Memo No. 906 dated 26-5-2020, contained in ANN-11, issued by the Sub Divisional Officer, Rajauli (For short: the SDO) cancelling License No. 195/2017, contained in ANN-1, which was issued for running a PDS Shop/Fair Price



Shop.

ii. For a consequential direction commanding the respondents to restore the supply and distribution of petitioner's Fair Price Shop forthwith, the same being his only source of livelihood which has been snatched illegally, unconstitutionally & in complete malafide.”

3. The brief facts of the case, according to the petitioner, are that the petitioner's License No.11/2007 (corresponding to new Licence No.195/2017) was cancelled by order dated 12.01.2019 passed by the SDO, Rajauli. The said cancellation order was successfully challenged in CWJC No 6418 of 2019, whereby this Court by order dated 13.02.2020 remitted the matter to the SDO, Rajauli for passing a fresh order. Thereafter the SDO by order dated 20.05.2020 (Annexure-7) restored the status quo ante and so the earlier licence stood restored. On the same day, a fresh show cause notice was issued (Annexure-8) calling for a response with regard to an FIR having been instituted on the allegation of irregularity in distribution of food-grains against the petitioner. The petitioner filed his reply dated 26.05.2020 (Annexure-9), whereupon the cancellation order dated 26.05.2020 has been passed by the SDO (Annexure-11).

4. Learned counsel for the petitioner submits that the



impugned cancellation order is wholly illegal and unsustainable, primarily as the relevant show cause notice dated 20.05.2020 (Annexure-8 at page 22) does not meet the requirement of law.

5. It is submitted that the show cause notice does not fulfil the mandatory condition of indicating proposed cancellation of the licence in terms of Rule 27(ii) of the Bihar Targeted Public Distribution System (Control) Order, 2016 (hereinafter referred to as the “Control Order, 2016”). Moreover, mere filing of an FIR cannot result in cancellation of licence, as such a situation could be guided only by Rule 28 of the Control Order, 2016 which contemplates mere suspension of the licence. It is further submitted that the action for cancellation of the licence based on the complaints made by the consumers other than those attached to the PDS shop of the petitioner cannot be sustained.

6. Learned counsel for the State opposes the writ petition, submitting that pursuant to the order of this Court dated 13.02.2020 (Annexure-6), a notice dated 05.03.2020 (Annexure R/C) was issued to the petitioner for filing a show cause. It is submitted that the subsequent show cause dated 20.05.2020 (Annexure-8) is in continuation of the aforesaid notice dated 05.03.2020. It is further submitted that as a matter of fact the complaints were received from the consumers attached to the



petitioner's PDS shop and not to the PDS shop of Mritunjay Kumar, as is evident from catering area shown in enumeration block (Annexure R/E).

7. Learned counsel for the petitioner on the other hand, relies on Annexure-12 to submit that as a matter of fact the consumers were attached to the shop of Mritunjay Kumar.

8. Having heard the parties and on a consideration of materials on record, this Court finds merit in the submissions of the petitioner.

9. This Court is of the view that the show cause notice as issued, in not indicating the proposed cancellation of the licence, failed to fulfill the mandatory requirement in terms of Clause 27(ii) of the Bihar Targeted P.D.S. (Control) Order, 2016 as held in *Parsauni Khirodhar Primary Agriculture Co-operative Society Ltd. & Ors. vs. The State of Bihar and others*, 2015 (3) PLJR 189. From none of the notices issued, has it been shown that the petitioner was ever put on notice of proposed cancellation. Moreover, institution of an FIR could at best lay the foundation for suspension of the licence, as evident from a bare perusal of Rule 28 of the Control Order, 2016.

10. Considering the aforesaid statutory violations in the foundational show cause notice, it is not necessary to enter into



the merits of the other contentions of the petitioner on facts. Accordingly, the impugned order dated 26.05.2020 contained in Memo No. 906 (Annexure-11) is hereby set aside and the writ petition is allowed with the observation that the licence of the petitioner shall be restored without delay.

11. Office shall follow-up to ensure that all defects are removed and compliance with the notices of this Court are made by the petitioner within the stipulated time provided in para 1 hereinabove, failing which the matter shall be brought to the notice of this Court.

(Vikash Jain, J)

HR/-

AFR/NAFR	NAFR
CAV DATE	-
Uploading Date	01. 02. 2021
Transmission Date	-

