

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4989 of 2021

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Kamlesh Prabhakar Son of Late Raghunandan Yadav Resident of Village-
Deora Bazar, P.O. - Usas Deora Bazar, P.O. - Usas Deora, P.S. - Konch,
District- Gaya

... .. Petitioner

Versus

1. The State of Bihar Through the Principal Secretary, Food and Civil Supplies
Department, Government of Bihar, Patna
2. The Divisional Commissioner, Magadh Division, Gaya Gaya
3. The District Magistrate, Gaya Gaya
4. The District Supply Officer, Gaya Gaya
5. The Sub- Divisional Officer, Tekari, Gaya Gaya
6. The Block Supply Officer, Konch, Gaya Gaya

... .. Respondents

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Appearance :

For the Petitioner : Mr. Shailesh Kumar
For the Respondents : Mr. Lalit Kishore (Ag)

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)**

3 27-01-2022 This matter has been taken up for hearing online
because of COVID-19 pandemic restrictions.

2. The petitioner's licence to run a fair price shop
under Bihar Targetted Public Distribution System (Control)
Order, 2016 (in short 'Control Order') was cancelled by an
order dated 26.05.2018 passed by the Sub-Divisional Officer,
Tekari, Gaya. His appeal against the said order came to be
dismissed by the District Magistrate, Gaya, by order dated
28.06.2019 passed in Supply Appeal Case No. 33 of 2018. The



petitioner thereafter preferred revision application before the Divisional Commissioner, Magadh Division, Gaya, giving rise to Supply Revision Case No. 154 of 2019, which has been dismissed by an order dated 02.01.2021. These three orders have been put to challenge in the present writ application filed under Article 226 of the Constitution of India.

3. Mr. Shailesh Kumar, learned counsel appearing on behalf of the petitioner has submitted that there is inherent incurable defect in the order passed by the Licensing Authority-cum-Sub-Divisional Officer, whereby the petitioner's licence was cancelled inasmuch as before passing of the said order no notice was given to the petitioner disclosing any proposal to cancel the licence. He has submitted that though a notice was issued to the petitioner before cancellation of the licence on 17.04.2018 (Annexure-3), the said notice did not contain any proposal for cancellation of licence for various alleged irregularities as noted in the said notice. He has drawn our attention to Rule 27(2) of the Control Order to contend that it was imperative for the licensing authority to disclose that it proposed to cancel the licence of the petitioner in the show cause notice dated 05.04.2018 before cancelling the licence. In support of the said submission, he has relied on a Division



Bench decision of this Court in the case of ***Ram Bachan Ram Vs. The State of Bihar and others***, reported in **2018(4) PLJR 516**.

4. Learned counsel representing the State of Bihar has not been able to counter the submission made on behalf of the petitioner to the effect that the notice must have contained proposal for cancellation of licence before passing of order of cancellation of licensing. It is an admitted fact that the said notice did not contain any proposal for cancellation of licence.

5. Rule 27(ii) of the Control Order reads as under : -

“(ii) No order of cancellation of a license shall be made until the licensee has been given sufficient opportunity to state his case against the proposal of cancellation of his license.”

6. In such circumstance, we find force in the submission made on behalf of the petitioner. Accordingly, the impugned order dated 26.05.2018 passed by the Sub-Divisional Officer, Tekari Gaya, cancelling the petitioner's licence No. 45 of 2016 cannot be said to be legally sustainable being in clear breach of Rule 27(ii) of the Control Order. The same is accordingly set aside. The appellate authority and the revisional authority miserably failed to take into account this aspect of the



matter and accordingly the impugned orders passed by the appellate authority dated 28.06.2019 and 02.01.2021 are also set aside.

7. This application is accordingly allowed.

8. The licensing authority shall be at liberty to issue fresh notice to the petitioner and pass appropriate order in accordance with the provision under Section 27 of the Control Order. It is, however, made clear that decision in this regard must be taken within three months from the date of receipt/production of a copy of this order. If the licensing authority fails to take a final decision within three months, the petitioner's licence shall be required to be restored.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

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