

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20497 of 2021

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Mahendra Sah, S/o Mahaveer Sah, R/o Panchayat - Bariaul, Block - Kewati,
P.O. - Bariaul, P.S. - Kamtaul, District - Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary Food and Civil Supply Government of Bihar, Patna.
2. The Principal Secretary, Food and Civil Supply, Government of Bihar, Patna.
3. The District Magistrate, Darbhanga.
4. The District Supply Officer, Darbhanga.
5. The Sub-Divisional Officer Sadar, Darbhanga.
6. The Assistant District Supply Officer, Sadar, Darbhanga.
7. The Block Supply Officer, Kewati, District - Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Alok Ranjan, Advocate
For the Respondent/s : Mr.Arvind Ujjwal (SC-4)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/ Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

Date : 08-02-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s).

“I. For quashing the order dated 22.11.2021 as contained in memo no. 708 dated 29.11.2021 issued and passed by the Sub-Divisional

Officer Sadar Darbhanga, whereby and where under the learned Sub Divisional Officer Sadar Darbhanga, has cancelled the Fair Price shop of the petitioner under Public Distribution system bearing License no. 19/2016, without considering the show-cause reply of the petitioner by a cryptic, unreasoned, unexplained order and the same has been issued on the recommendation made by the Block Supply Officer, Kewati, and that too on the basis of notice issued which is not in consonance with statutory provisions of the act, as it does not contains any proposal for punishment as contemplated under Sub-Rule (II) of Rule 27 of the Act and the same is not sustainable in the eye of law and the same is fit to be quashed.

II. Further for direction to the respondents to restore the license and supply to the Fair Price shop of the petitioner under Public Distribution System bearing License no. 19/2016.

III. For any other appropriate relief/reliefs to which the petitioner is found entitled in the facts and circumstances of this case.”

It is submitted on behalf of petitioner that in the show cause notice dated 23.08.2021 (Annexure 1) and 25.09.2021(Annexure 3) issued by the SDO -cum- Licensing Authority, Sadar Darbhanga, petitioner was directed to submit his reply with respect to irregularities found in his PDS shop at

the time of inspection made by the officials, however, in the show cause notice, there was no proposal for cancellation of PDS licence, as mandated under Rule 27 of Bihar Targeted P.D.S. (Control) Order, 2016, which reads as follows:-

“ **27. Cancellation of License.-** (i) If a licensee violates any provision of this Order or fails to comply duties and responsibilities assigned to the license, his license shall be cancelled by the licensing authority by a written order, and such a cancellation of license shall not affect other actions initiated/initiable under the Essential Commodity Act, 1955 (Central Act 10 of 1955).

(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.

(iii) The cases of violation of the provisions of this Order shall be disposed of within two months, as far as possible, after coming in cognizance as for.”

Learned counsel for the petitioner has relied upon a judgment and order dated 4.2.2022 passed by Division Bench of this Honb’ble Court in **CWJC No.10079 of 2021 (Md. Hanif Ansari Vs. the State of Bihar & ors.)**.

Having regard to the facts and circumstances of the case, this Court finds that the show cause notices dated 23.08.2021 (Annexure 1) and 25.09.2021 (Annexure 3) issued by the Sub-Divisional Officer, Sadar Darbhanga suffer from material illegality inasmuch as it is contrary to the provisions contained under Rule 27(ii) of the Bihar Targeted PDS (Control)

Order, 2016, since no proposal regarding cancellation of license has been mentioned in the said show cause notice dated 23.08.2021 and 25.09.2021 resulting in the petitioner being precluded from submitting his defence, leading to violation of the principle of natural justice, hence the impugned order dated 22.11.2021 passed by the Sub-Divisional Officer, Sadar Darbhanga cancelling the license of the petitioner, stands vitiated in the eyes of law, thus is quashed, however, the matter is remanded back to the Sub Divisional Officer, Sadar Darbhanga to proceed afresh, in accordance with law.

The writ petition stands allowed.

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/rajiv-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	