

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3812 of 2023

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Amit Kumar Sahni, Son of Hari Narayan Sahni Resident of Village and P.O.-
Nehra, Block and Police Station- Manigachhi, District- Darbhanga (847233).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection Department, Bihar, Patna.
2. The Additional Secretary, Food and Consumer Protection Department, Bihar, Patna.
3. The Commissioner, Darbhanga Division, Darbhanga.
4. The Collector, Darbhanga.
5. The District Supply Officer, Darbhanga.
6. The Licensing Officer-cum-Sub-Divisional Officer, Sadar, Darbhanga.
7. The Block Supply Officer, Manigachhi, Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kaushalesh Choudhary, Advocate.

For the Respondent/s : Mr. Arvind Ujjwal, SC-4.

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

6 11-09-2023 Heard learned counsels for the parties.

2. The petitioner, a PDS licensee, has challenged the order dated 19.11.2022 passed by the Licensing Officer-cum-Sub-Divisional Officer, Sadar, Darbhanga cancelling his licence and the order passed in appeal sustaining the order of cancellation of the licence.

3. One of the main grounds taken by the petitioner to challenge the aforesaid orders, viz, that the licensing authority did not appreciate that the petitioner was absent from his shop only for a day, for which a reasonable explanation was given stating that the petitioner went to meet the District Cooperative



Officer as the said officer wanted to meet the petitioner. But the same was not accepted by the licensing authority and the licence of the petitioner was cancelled. Even, the appellate authority while upholding the aforesaid decision of the licensing authority has stated that the petitioner had not taken leave from the licensing authority to be absent for a particular day.

4. Learned counsel for the petitioner submits that there is no requirement under the Control Order of 2016. Rule 15 of the Control Order of 2016 for taking any permission, Rule 15 reads as hereunder:

"15. Working Period and

Leave. (i) A shop of public distribution system shall be kept open every day in a week from 7.00 am to 1.00 pm from March to August and from 8.00 am to 2.00 pm from September to February.

(ii) If a fair price shop owner is unable to operate the shop due to unavoidable reasons for a limited period, he shall submit an application to the licensing authority. The licensing authority may give him permission to go in leave after making optional arrangement for supply of essential commodities to the consumers related to his shop. The maximum period of leave shall be of 90 days at a time."

5. A perusal of the above provision makes it clear that permission is required to be taken by a shop owner only if he is unable to operate the shop for a long time due to unavoidable



reasons and the leave would be of maximum 90 days at one time, but not for a day or two.

6. There is no implicit condition in the Control Order of 2016 for seeking leave for a day and remaining absent from the shop.

7. In that event, both the authorities, namely, the licensing as well as the appellate authority were under an obligation to look at the correctness of the explanation offered by the petitioner that he was absent from his shop on the day of inspection because of certain unforeseen and uncontrollable circumstance.

8. For this reason alone, the order passed by the licensing authority as also the appellate authority are set aside.

9. The mater is remanded back to the licensing authority i.e. the Respondent No. 6 for passing order afresh duly taking into consideration the observations made by this Court in the present order.

10. It is needless to mention that before passing any orders the petitioner shall be put on notice and given an opportunity of hearing. The entire exercise shall be completed as expeditiously as possible preferably within a period of sixty days from the date of receipt of this order. Any order passed



shall be communicated to the parties.

11. The writ petition stands disposed off accordingly.

(A. Abhishek Reddy , J)

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