

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12825 of 2023

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Md. Daud Son of Hafiz Abbas Ali, Resident of village- Ward No. 14, Post-
Siswaniya, P.S.- Banjaria, District- East Champaran, Motihari, Bihar, 845401.
... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Patna.
2. The Divisional Commissioner, Circle- Tirhut, Muzzafarpur.
3. The District Magistrate, East Champaran, Motihari.
4. The Sub Divisional Officer, Sadar, Motihari.
5. The Assistant District Supply Officer, Sadar, Motihari.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. N.K. Agarwal Sr. Advocate Mr. Kumar Rajdeep, Advocate Mr. Arvind Kumar, Advocate
For the Respondent/s	:	Mr. S. Raza Ahmad (Aag5)

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

3 26-09-2024 Heard the learned counsel for the parties.

2. The present writ petition has been filed for the
following relief(s) :

*“For issuance of a writ in the nature
of Certiorari for quashing the order dated
10.03.2021(Annexure-6) passed by the SDO,
Sadar, Motihari, the appellate order dated
19.05.2022 passed by the District Magistrate,
East Champaran, Motihari (Annexure-7) and
also the revisional order dated 30.06.2023
passed by the Divisional Commissioner, Tirhut,
Muzzafarpur (Annexure-9) whereby and where
under the Public Distribution License of the
Petitioner bearing License No. 02050031/2007
has been cancelled on totally non-est and*



erroneous grounds in completely mechanical manner-without considering the reply of the Petitioner.

(ii). For holding and declaring the Order dated 10.03.2021 (Annexure-6) passed by the SDO, Sadar, Motihari, the order dated 19.05.2022 passed by the District Magistrate, East Champaran, Motihari (Annexure-7) and also the revisional order dated 30.06.2023 passed by the Divisional Commissioner, Tirhut, Muzzafarpur (Annexure-9) is liable to be set-aside as same has been passed in violation of Principles Of Natural Justice, inasmuch as the Impugned Order has been passed without considering the facts and circumstances of the case.

(iii). For issuance of any other relief/s for which the petitioner is entitled for.”

3. Learned counsel appearing on behalf of the petitioner has stated that the order impugned in the present Writ Petition is liable to be set aside on the ground that the same is passed contrary to the provisions of the Bihar Targeted Public Distribution System (Control) Order, 2016 (hereinafter referred to as, ‘the Control Order, 2016’) and also the facts of the case. Learned counsel has stated that as per Rule 25(i)(a) of the Control Order, 2016, the licensee is obligated to keep the shop



open throughout the month during the stipulated period. That as per Rule 15 of the Control Order, 2016, the shop should be kept open from 07.00 a.m. to 01.00 p.m. from March till August and from 08.00 a.m. to 02.00 p.m. from September to February. Learned counsel has stated that the authority concerned has inspected the shop on 29.11.2020 at 02.30 p.m. and having found the shop closed has issued the show cause notice. Even though the petitioner has given a suitable reply, the same was not considered and order of cancellation was passed by the Sub Divisional Officer, Sadar, Motihari, (Respondent No. 4) in a mechanical manner. The learned counsel has stated that even though the petitioner has filed an appeal aggrieved by the order of cancellation, the Appellate Authority, has not considered the grounds and rejected the appeal confirming the order of cancellation passed by the Respondent No. 4. Learned counsel has stated that as per Rule 15 of the Control Order, 2016, the petitioner is obligated to keep the shop open from 07.00 a.m. to 01.00 p.m. only whereas the inspection took place at 02.05 p.m., That the shop of the petitioner was closed at 02.00 p.m. and the petitioner cannot be blamed for keeping the shop closed after the stipulated period, therefore, learned counsel has prayed this Hon'ble Court to allow the present Writ Petition by set aside the



impugned order.

4. Per contra, the learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the present Writ Petition and stated that the petitioner has an alternative and effective remedy of filing an application under the Control Order, 2016. Learned counsel has stated that at the time of inspection the shop was closed and as per the guidelines which have been issued by the Government on 15.06.2021 vide Memo No. 3164 the petitioner was obligated to keep the shop open from 06.00 a.m. till 06.00 p.m. in the evening. That the authority concerned duly taking into consideration that the petitioner has not kept the shop open has taken necessary action strictly in accordance with law. Learned counsel has, therefore, prayed this Hon'ble Court to dismiss the present Writ Petition.

5. In order to resolve the issue in the present Writ Petition it is necessary to extract the provisions of the Act of the Bihar Targeted Public Distribution System (Control) Order, 2016, i.e., more particularly Rules 15 and 25(i)(a) of the Order, which are stated as follows :

“15 : Working 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.”

“25. Action against a licensee. - (i) *In view of the order passed by the Hon'ble Supreme Court in Civil Writ 196/01, action shall be taken against the licensees in the following circumstances :-*

Licensees who, (a)
do not keep their shops open throughout the month
during the stipulated period;

.....
.....”

6. A perusal of the above Rules clearly stipulate that the petitioner is obligated to keep the shop open from 07.00 a.m. till 01.00 p.m. from March till August and from 08.00 a.m. to 02.20 p.m. from September to February. Admittedly, in the present case the inspection of the shop has taken place on 29.11.2020 at 02.30 p.m., i.e., after the stipulated time. That



there was no legal obligation on behalf of the petitioner to keep the shop open after the stipulated time, i.e., after 01.00 p.m., even otherwise also the license of the petitioner cannot be cancelled on such trivial grounds. Even though in the counter affidavit filed by the respondents a ground is taken that as per the Notification issued by the Government on 15.06.2021 the petitioner was obligated to keep the shop open from 06.00 a.m. to 06.00 p.m. It is to be noticed that the said Notification has been issued after the date of inspection, therefore, the said Notification cannot have any application to the facts of the present case. At the most the said Notification is prospective in nature and cannot be applied retrospectively. There is no violation of the Control Order as alleged against the petitioner and the petitioner has maintained the timing as stipulated under Rule 15 of the Control Order, 2016.

7. A perusal of the order of the Sub Divisional Officer Sadar, Motihari, (Respondent No. 4) as well as the Appellate Authority shows that the authorities have not taken into consideration the provisions of Rule 15 of the Control Order, 2016, and have dealt the case in a mechanical manner. Even though the petitioner has taken a specific ground the same was not considered by the authorities. Once it is held that the



petitioner’s shop was closed as per the stipulated times, the other allegations made against the petitioner fail into insignificance and cannot be a ground for cancelling the license.

8. Having regard to the above the impugned orders are **set aside** and the authorities are directed to restore the license of the petitioner forthwith and the petitioner shall be permitted to resume the supplies.

9. With the above directions, the Writ Petition stands **allowed** to the extent indicated.

(A. Abhishek Reddy , J)

Ankit Kumar/-

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