

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17897 of 2023

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Krishna Kumar Paswan Son of Parmeshwar Paswan Resident of Ughara,
Block and Police Station-Bahadurpur, District-Darbhangha, Pincode 847101.

... .. 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 Collector, Darbhanga District, Darbhanga.
4. The District Supply Officer, Darbhanga.
5. The Licensing Officer-Cum-Sub-Divisional Officer, Sadar, Darbhanga.
6. The Block Supply officer, Bahadurpur, Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Kaushalesh Choudhary, Adv.
For the Respondent/s	:	Mr. Ajay (Ga5)
For the State	:	Mr. Akash Raj, AC to GA-5

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

2 30-04-2024 Heard the learned counsel for the parties.

2. This writ petition has been filed for the following

relief(s):-

“i. For issuance of appropriate writ(s)/Rule(s)/Direction(s) in the nature of mandamus, commanding the concerned respondents, for quashing the Order dated 05.10.2023, passed by the Licensing Officer-cum-Sub Divisional Officer, Sadar, Darbhanga, issued vide memo No. 54 (Mu) dated 05.10.2023, by which the petitioner’s Licence no. 20/2018 of his PDS Shop, situated at



Gram Panchayat Raj Ughara, Bahadurpur, Darbhanga, has been cancelled, only on the ground of closure of his Shop for one day, even without considering his Reply dated 05.07.2023, to the Show cause notice, issued vide Memo No. 530 dated 26.06.2023 as well as reply dated 01.08.2023 to the second show cause notice, issued vide memo No. 671 dated 28.07.2023, issued by the Sub-Divisional Officer, Sadar, Darbhanga.

ii. For restoration of Petitioner's License No. 20/2018 with all facilities, available to the PDS Shop."

3. Learned counsel for the petitioner has stated that the petitioner has been appointed as PDS dealer in the year 2018 and there is absolutely no complaint against the petitioner. That the shop of the petitioner was closed on the single date on which day the inspection took place i.e. 26.06.2023 and on that sole ground, the authorities have cancelled the allotment made to the petitioner. Learned counsel has stated that the matter is fairly covered by the judgment of this Hon'ble Court passed in C.W.J.C. No. 3812 of 2023 dated 11.09.2023. Learned counsel has prayed that the impugned order may be set aside and the license restored to the petitioner.

4. Per contra, the learned counsel appearing on behalf



of the respondents have vehemently opposed the very maintainability of the present writ petition and stated that the petitioner is having an alternative and effective remedy of filing an appeal before the District Magistrate. That the petitioner without availing the said remedy has straightaway approached this Hon'ble Court by way of the present writ petition and the same is not permissible. Further, learned counsel has stated that contention of the petitioner that the order of cancellation is passed only on the ground that the shop of the petitioner is closed, is not correct and has drawn the attention of the Court to the show cause notice issued to the petitioner on 26.06.2023 (Annexure-P/2) to show that there are other allegations. Learned counsel has therefore prayed for dismissing the CWJC and direct the petitioner to avail the alternate remedy of appeal.

5 A perusal of the show cause notice issued to the petitioner reveals that besides making other allegations, action was sought to be taken against the petitioner for keeping the shop closed on the date of inspection i.e. 26.06.2023. If the contention of the authorities that the shop was closed on the date of inspection is taken as true, the other allegations made against the petitioner i.e. on verification of the EPOS machine, it was found that 36.7 quintals of wheat and 113.97 quintals rice



shortage is there has to be necessarily held to be false. It is not understandable as to how the authorities have come to the said conclusion when the shop is closed. The respondents cannot blow hot and cold at the same time. This Court in C.W.J.C. No. 3812 of 2023 while interpreting Rule 15 of the Control Order, 2016 as held as under:-

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.”

6. Having regard to the above, the impugned order is set aside and the authorities are directed to restore the PDS license of the petitioner. In future if any violations are observed by the authority, they are free to take necessary action in accordance with law.

7. With the above directions, the writ petition is allowed to the extent indicated.

(A. Abhishek Reddy , J)

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