

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2785 of 2024

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Kapildev Baitha, Son of Shivdhari Baitha, Resident of Village- Mahuain,
Ward No.- 2, Bachopatti, Narha, Block- Bajpatti, P.S.- Bajpatti, District-
Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar, Principal Secretary, Food and Consumer protection
Department Govt. of Bihar, Patna.
2. The District Magistrate, Sitamarhi.
3. The District Supply Officer, Sitamarhi.
4. The Sub-Divisional Officer, Pupri, Sitamarhi.
5. The Block Supply Officer, Bajpatti, Sitamarhi.
6. The Block Supply Officer, Sursand, Sitamarhi.
7. The Block Supply Officer, Nanpur, Sitamarhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Vijay Anand, Adv.
For the Respondent/s : Mr. G.P. Ojha, Government Advocate 7

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

12 31-01-2025 Heard the parties.

2. The present writ petition is filed for the following
relief(s):-

*“(i) Dated 18.12.2023 passed by learned
Sub-Divisional officer, Pupri, Sitamarhi
contained in Memo No. 673 whereby and
whereunder the license granted to the
petitioner for carried a business of a
Public Distribution shop in Panchayat
Bachopatti, Narha, Block-Bajpatti within
the District Sitamarhi was cancelled on the
ground that even if reasonable opportunity
given to the petitioner his show cause was
not found satisfactory which shows the
irregularities was committed by the
petitioner while operation of the license.*



(ii) Pass such other order/s as your Lordship may deem fit and proper in the facts and circumstances of the case including the order of starts of allotment with immediate effects after quashing the order dated 18.12.2023.”

3. Learned counsel appearing on behalf of the petitioner has stated that the present writ petition is filed assailing the orders passed by the Sub-Divisional Officer, i.e., Respondent No. 4 in cancelling the PDS licence of the petitioner. Learned counsel has stated that the show cause notice was issued to the petitioner on 01.11.2023 pursuant to the inspection report submitted by the Block Supply Officer on 30.10.2023 at 2.30 P.M. Learned counsel for the petitioner has stated that as per the provisions of the Control order, the petitioner is obligated to keep the shop open from 8 A.M. to 2 P.M. Learned counsel has stated that the entire procedure adopted by the respondents in cancelling the license of the petitioner is vitiated as inspection was done beyond the period fixed in Rule 15 of the Bihar targeted public distribution system (control) order 2016, for keeping the shop open. Learned counsel has, therefore, prayed this Hon'ble Court to set aside the impugned order. Further learned counsel has stated that the procedure adopted by the respondents is contrary to the



principle of natural Justice and equity and also Rule 15 of the Bihar targeted public distribution system (control) order 2016.

4. Per contra, learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the present writ petition. Learned counsel has stated that the petitioner has an alternative and efficacious remedy of filing an appeal before the District Magistrate but without availing the same, the petitioner has straightaway approached this Hon'ble Court. Learned counsel has, therefore, prayed this Hon'ble Court to dismiss the present writ petition.

5. In order to appreciate the issue involved in the present writ petition, the provisions of Control Order, more specifically, Rule 15 is to be examined. Rule 15 of the Bihar targeted public distribution system (control) order 2016 reads as under:

“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.”

6. A perusal of Rule 15 shows that the petitioner is obligated to keep the PDS shop open from 8 A.M. to 2 P.M. from the Month of September to February. Admittedly, in this particularly case the inspection took place on 30.10.2023 at 2.30 P.M., i.e., beyond the working hours. Therefore, the inspection has to be held as bad and the consequential show cause notice issued to the petitioner is also to be declared as illegal. The entire procedure adopted by the authorities and passing of the impugned order dated 18.12.2023 by the Sub-Divisional Officer is liable to be set aside as it is contrary to the provisions of the Control order. That in so far as the objection taken by the respondent counsel that the petitioner has an alternative and efficacious remedy of filing an appeal is concerned, it is also to be rejected on the ground that once it is held that the procedure adopted by the authorities is bad, illegal and contrary to the provisions of the act, the bar of alternative remedy will not apply.

7. The Supreme Court in **Whirlpool Corporation v.**



Registrar of Trade Marks, Mumbai (1998) 8 SCC1 has held
as under:

"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose". 15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.



There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

8. Having regard to the above stated factual and legal position, the present writ petition is allowed. The impugned order dated 18.12.2023 passed by the Sub-Divisional Officer is set aside. The PDS license of the petitioner is restored and the authorities are directed to resume the supply of grains for the distribution immediately.

(A. Abhishek Reddy , J)

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