

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15820 of 2023

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Kawleshwar Ram, Son of Late Fagu Ram, R/o Village- Kalyanpur,
Panchayat- Chilhar (Indaur) P.S. Itarhi, Buxar, Bihar-802117

... .. Petitioner/s

Versus

1. The State of Bihar Through the Chief Secretary, Government of Bihar, Patna.
2. The Divisional Commissioner, Patna.
3. The District Magistrate, Buxar.
4. The Sub-Divisional Officer, Buxar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Mayuri, Adv.
For the Respondent/s : Mr.Arvind Ujjwal (SC 4)

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

4 01-09-2025 When the matter was listed on 18.08.2025, the same
was adjourned to 25.09.2025.

2. Learned counsel appearing on behalf of the
petitioner has made mention for taking up the matter at an early
date and therefore, the present writ petition is posted today, i.e,
1st September, 2025.

3. Heard the parties.

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

“(i) For issuance of a direction, order or writ, including a writ in the nature of certiorari to quash the Order Dated 03.12.2021 (Annexure-3) passed by the Sub-Divisional Officer, Buxar whereby the Fair Price Shop License of the Petitioner



for running the PDS shop has been cancelled arbitrarily without considering the reply of the petitioner.

(ii) For issuance of a direction, order or writ, including a writ in the nature of certiorari to quash order dated 25.03.2022(Annexure-6) passed by the District Magistrate, Buxar whereby the order of cancellation passed by the Sub Divisional Officer has been upheld mechanically.

(iii) For issuance of a direction, order or writ, including a writ in the nature of certiorari to quash order dated 04.05.2023 (Annexure-7) passed by the Divisional Commissioner, Patna whereby the order of cancellation passed by the District Magistrate, Buxar has been upheld mechanically.

(iv) For issuance of a direction, order or writ, including a writ in the nature of mandamus to direct the Respondent Authority to recall the order of cancellation of license of the petitioner and to restore the resumption of supply of food grains and other commodities as per law.

(v) For issuance of any other relief/reliefs which it may deem to be fit and proper with the facts and circumstances of the present case.”

5. Learned counsel appearing on behalf of the petitioner has stated that the PDS license of the petitioner has been cancelled by the authority based on the inquiry report submitted by the Block Supply Officer. Learned counsel has stated that pursuant to the inspection by the Block Supply



Officer which has been taken place on 26.08.2021 at 4P.M., the Block Supply Officer has submitted a report. Based on the said report, the petitioner has been issued show cause notice on 01.09.2021 (Annexure 1) by the Sub-Divisional Officer, Buxar. Learned counsel further submits that though the petitioner has taken specific stand in his explanation (Annexure 2) to the show cause notice dated 01.09.2021 stating that the inspection has taken place at 4 P.M. and the same is contrary to the provisions of the Bihar Targeted Public Distribution System (Control) Order, 2016. The authority without adverting to the said contention has cancelled the PDS license of the petitioner. Learned counsel further submits that though the petitioner has filed an appeal before the appellate authority and revision before the revisional authority questioning the order of cancellation, both the authorities have not taken the above ground into consideration and rejected the appeal and revision. That the petitioner left with no other alternative option has filed the present writ petition. Learned counsel appearing on behalf of the petitioner has relied on the Judgment of this Hon'ble Court passed in CWJC No. 2785 of 2024 dated 31.01.2025.

6. Per contra, learned counsel appearing on behalf of the respondents-State has vehemently opposed the very



maintainability of the present writ petition. Learned counsel has stated that the petitioner has an alternative and effective remedy of filing a representation before the Principal Secretary, under Rule 32(vii) of the Bihar Targeted Public Distribution System (Control) Order, 2016. Learned counsel has, therefore, prayed this Hon'ble Court to dismiss the present writ petition.

5. This Court under similar circumstances in CWJC No. 2785 of 2024 dated 31.01.2025 has held as under:-

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 SCC 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. mandamüs. 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."

7. Admittedly in the present case also the petitioner at the first instance, i.e., at the time of filing his explanation to the show cause notice dated 01.09.2021 has taken specific stand that the shop of the petitioner was inspected at 4 P.M. The said fact has not been denied by the respondents nor adverted to in the orders passed by the Sub-Divisional Officer, the Appellate Authority as well as the Revisional Authority. The inspection of the shop done at 4 P.M. is contrary to the provisions of Rule 15 of the Bihar Targeted Public Distribution System (Control) Order, 2016 and therefore has to be held as illegal, bad and contrary to the provisions of the Control Order.

8. Having regard to the above mentioned facts and circumstances of the case, the impugned orders passed by the Sub-Divisional Officer, Buxar dated 03.12.2021 (Annexure 3), the Appellate Authority, Buxar dated 25.03.2022 (Annexure 6) as well as the order passed by the Divisional Commissioner dated 04.05.2023 (Annexure 7) are all set aside. The PDS license of the petitioner stands restored. The respondents are



directed to see that the food grains are made available to the petitioner for distribution to the beneficiaries at the earliest positively within a period of 4 weeks from the date of receipt of the copy of this order.

9. With the above direction, the present writ petition stands allowed to the extent indicated above.

(A. Abhishek Reddy , J)

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