

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21246 of 2021

Archana Kumari W/o Sri Ranjit Kumar Mishra, Resident of Ward No. 13,
Basuara, Banswara, Araila, Block - Hanuman Nagar, Police Station- Moro,
District - Darbhanga, Pin Code - 847106.

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Food and Consumer Protection Department, Bihar, Patna.
2. Additional Secretary, Food and Consumer Protection Department, Bihar, Patna.
3. The Collector, Darbhanga.
4. The Licensing Officer-cum-Sub-Divisional Officer, Sadar, Darbhanga.
5. The District Supply Officer, Darbhanga.
6. The Assistant District Supply Officer, Darbhanga.
7. The Block Supply Officer-cum-Block Development Officer, Hanuman Nagar, Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Kaushalesh Choudhary
For the Respondent/s : Mr. Anisur Haque

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 22-02-2022

Heard Mr. Kaushalesh Choudhary, learned

Advocate for the petitioner and Mr. Anisur Haque for the
State.

The petitioner, a PDS licensee, has challenged the
orders passed by the licensing authority cancelling her



licence and the order passed in appeal sustaining the order of cancellation of the licence.

A slender ground has been taken by the petitioner to challenge the aforesaid orders, viz, that the licensing authority did not appreciate that the petitioner was absent from her shop only for a day, for which a reasonable explanation was given by her along with the supporting document like the prescription of the doctor. That was not accepted by the licensing authority and the licence of the petitioner was cancelled. However, the appellate authority has upheld the aforesaid decision of the licensing authority on other grounds as also for the reason that the petitioner had not taken leave from the licensing authority to be absent for a particular day.

Learned counsel for the petitioner submits that it is not the requirement under the Control Order of 2016. Rule 15 of the Control Order of 2016 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.”

A permission is required to be taken by a shop owner only in condition of his inability to operate the shop for a long time due to unavoidable reasons and the leave would be of maximum 90 days at one time.

There is no implicit condition in the Control Order of 1916 of seeking leave even for a day for remaining absent from the shop.

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 she was absent from her shop



on the day of raid because of certain unforeseen and uncontrollable circumstance.

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

The licensing authority, namely, respondent no.4, shall after giving an opportunity to the petitioner to explain her cause afresh will take a final decision in the matter preferably within a period of sixty days to be counted from the date of receipt/production of a copy of this order.

The writ petition stands disposed of accordingly.

(Ashutosh Kumar, J.)

(Anjani Kumar Sharan, J.)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.02.2022
Transmission Date	

