

(2009) 12 PAT CK 0037
In the Patna High Court
Case No : CWJC No. 4979 of 2006

Paspat Prasad @ Raghunath Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-12-2009

Acts Referred:

Citation : (2011) 2 PLJR 698

Hon'ble Judges : Samarendra Pratap Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Samarendra Pratap Singh, J.—Heard learned Counsel for the Petitioner and learned Counsel for the State.

2. The Petitioner has challenged the impugned order dated 23.7.2001 passed by the Sub-Divisional Officer, Narkatiaganj and the appellate order dated 16.1.2006 passed by the Collector, West Champaran, Bettiah cancelling the license of the Petitioner bearing License No. 43/84. The Petitioner states that the impugned order passed both by the Licensing Authority as well as the Appellate Authority is bad in law as the same has not complied with the mandatory provision of Clause 11 (2) of the Bihar Trade Articles (Licenses Unification) Order, 1984. The said Clause-11 (2) clearly speaks that no order of cancellation shall be made under this clause unless licensee has been given a reasonable opportunity stating his case against proposed cancellation but during the pendency or in contemplation of proceedings of cancellation of license, the license can be suspended for a period not exceeding 90 days without giving any opportunity to the licensee of stating his case.

3. Learned Counsel for the State has filed counter affidavit stating therein that the Petitioner has charged excess price from the customers and at times even did not distribute the items to them. The counsel for the State thus states that the cancellation of the Petitioner's license has been rightly cancelled.

4. In view of Clause 11 (2) stated above, a license of a P.D.S. dealer cannot be cancelled unless a proceeding under Sub-clause 2 of Clause 11 is initiated. The order initiating such proceedings must reflect that show cause is being issued for explaining cause against proposed cancellation of license. The show cause notice contained in Annexure-1, does not reflect that the Licensing Authority pro-posed to cancel P.D.S. license of the Petitioner.

5. In view of the aforesaid circumstances, the impugned orders cancelling the license and the agreement contained in Annexure 3 and 4 are set aside. It would be open to the Authority to proceed further in accordance with law.

6. The writ application stands allowed.