

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.9979 of 2016**

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M/s Ally Foods Pvt. Ltd., a Company incorporated under the Companies Act, 1956 having its registered office Guari Shankar Colony, Gaighat Gulzarbagh, Patna 800007 through its Director Sanjay Kumar Gautam son of Late Ram Nagina Dwivedi resident of Anisabad P.S. Gardanibagh, District-Patna

.... .... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Excise and Prohibition, Government of Bihar, Patna
2. The Principal Secretary, Excise and prohibition, Government of Bihar, Patna
3. The Excise Commissioner, Excise and Prohibition, Government of Bihar, Patna
4. The Collector, Darbhanga
5. The Excise Superintendent, Darbhanga
6. Punjab National Bank, Buddha Colony Branch, Patna through its Chief Manager
7. Chief Manager, Punjab National Bank, Buddha Colony Branch, Patna

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Satyabir Bharti, Advocate

For the State : Mr. Lalit Kishore, PAAG-I

For Respondent Nos. 6 & 7: Mr. Suresh Prasad Singh No.1, Advocate

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI**

**and**

**HONOURABLE JUSTICE SMT. NILU AGRAWAL**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)**

**Date: 31-01-2017**

Heard counsel for the petitioner and the  
  
learned Principal Additional Advocate General No.1 for the  
  
State.

2. Despite the adjournment granted on  
  
09.01.2017 to produce any evidence or rule which empowers



the Principal Secretary of the Department of Excise to pass orders, as contained in Annexure-11 to this writ application forfeiting the bank guarantee of the petitioner to the extent of Rs. one crore, nothing has emerged even today.

3. Not that the Court was looking forward to an answer because this power flows from statutory provision and there is no power vested in the Principal Secretary. Power is vested either in the Licensing Authority or the Excise Commissioner. Since the impugned order contained in Annexure-11 has not been passed by the competent authority, but a kind of usurper of power by virtue of being the nodal civil servant of the Department, the Court is left with no option, but to quash the order dated 16.06.2016 contained in Anneuxre-11. The consequence of quashing of this order will flow in favour of the petitioner, within two weeks.

4. Counsel for the State thereafter submits that the matter may be remanded back for the Excise Commissioner to reconsider. This Court has nothing to offer on such submission because the Court is more concerned about the manner in which power has been exercised and



continuance of an illegal decision and order even for a minute violates the rule of law in this country.

5. The writ application is allowed.

**(Ajay Kumar Tripathi, J.)**

**(Nilu Agrawal, J.)**

Arjun/-

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| AFR/NAFR          | NAFR       |
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