

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16231 of 2017

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Basanti Devi, wife of Sri Niwash Yadav, resident of Village- Piraunta, P.S. Ara Sadar, District Bhojpur (Ara), Bihar.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
2. The District Magistrate cum Collector, District Bhojpur (Ara), Bihar.
3. The Sub Divisional Officer cum Adjudicating Authority, Ara Sadar, District Bhojpur (Ara), Bihar.
4. The District Supply Officer, District Bhojpur (Ara), Bihar.
5. The Block Supply Officer, Ara Sadar, District Bhojpur (Ara), Bihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhat Ranjan, Adv.

Mr. Chandan Kumar, Adv.

For the Respondent/s : Mr. Anisul Haque, Ac to AAG-5

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

Date: 09-08-2018

Heard learned counsel for the petitioner and learned counsel appearing on behalf of the State.

Petitioner challenges the order of cancellation of his PDS Licence No. 53 of 2007 dated 16.11.2016 as contained in Annexure-5 issued by the respondent no. 3, the Sub Divisional Officer, Bhojpur (Ara).



It has been submitted by the learned counsel for the petitioner that the said cancellation is in violation of principles of natural justice as the enquiry report which has been relied upon by the Licensing Authority while cancelling his licence has not been provided to him and also the list of beneficiaries who had complained against him has not been provided. In pursuance to the inspection done on 16.08.2016 and 16.09.2016 by the Block Supply Officer and Assistant Supply Officer respectively, two show causes were issued to the petitioner on 12.09.2016 and 28.09.2016 which is Annexure-1 and 2 of the writ application. Petitioner vide letter dated 14.10.2016 asked the Licensing Authority for supply of inspection report and the list of beneficiaries who had complained against him. Neither inspection report nor the list of beneficiaries have been given to the petitioner. Petitioner filed a detailed show cause reply in pursuance to which the licence has been cancelled on 16.11.2016 by the impugned order. Learned counsel for the petitioner submits that an appeal being Appeal No. 04 of 2016-17 has been filed before the District Magistrate, Bhojpur (Ara) which is pending for the last two years.

Learned counsel for the State, however, submits that since the petitioner has already subjected himself to the alternative remedy of appeal as provided under the Act, the writ application is



not maintainable.

Considering the rival submissions of the parties, since the State counsel could not show as to by what letter the enquiry report or the list of beneficiaries, who had complained against the petitioner, was supplied the non supply of enquiry report and list of beneficiaries who had complained has resulted in violation of principles of natural justice, hence, the decision making process stand vitiated. Since the initial order has been passed without compliance of the principles of natural justice the subsequent pendency of appeal would not be a deterrent in deciding the present matter as when the substratum fails the superstructure cannot stand. Thus, in view of the said observation, since the principles of natural justice has been violated, the impugned order dated 16.11.2016 is set aside and the matter is remanded to the respondent no. 3, the Sub Divisional Officer, Bhojpur (Ara) to supply a copy of the enquiry report/reports to the petitioner along with the statement of the beneficiaries who had complained and after granting an opportunity of hearing a fresh decision in the matter be taken. Supply to the petitioner shall be restored forthwith without delay unless fresh orders are passed by the respondent no. 3.

However, it is made clear that if non-supply of enquiry report and the list of beneficiaries, who had complained against the petitioner,



is found to be incorrect, the respondents shall be at liberty to approach this Court for recall of this order.

Writ application is allowed as above.

(Nilu Agrawal, J)

Devendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.08.2018
Transmission Date	NA

