

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3989 of 2019

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Chandra Mohan Singh Son of late Surendra Prasad Singh R/o Village-
Badhmotara, P.S. Gaighat, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Food and Consumer Protection, Bihar, Patna.
2. The District Magistrate, Muzaffarpur.
3. The Sub Divisional Officer, East Champaran, Muzaffarpur.
4. The Addl. District Supply Officer, Muzaffarpur.
5. The Block Supply Officer, Gaighat, Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pradhan Murli Manohar Prasad with
Mr. Raju Kumar Goswami, Advocates

For the State : Mr. Alok Ranjan, AC to AAG-5

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 29-05-2019

Heard learned counsel for the petitioner and learned AC
to AAG 5 for the State.

2. The petitioner has moved the Court for the following
reliefs:

*“That the petitioner has been filed for issue an
appropriate order/s, direction/s including a writ
preferably in the nature of CERTIORARI for quashing of
the order dated 29-10-18 passed by the learned S.D.O.
East, Muzafarpur (hereinafter referred to as Licensing*



Authority under the Bihar Targeted Public System (Control) order 2016) whereby and where under he has cancelled the fair price shop license of the petitioner vide License No. 23-04-02-04/2016.

Further the respondent No. 2 may be directed to dispose of the Appeal No. 19 of 2018-19 which is still pending before him expeditiously of PDS shop is the only means of earning livelihood.

The petitioner seeks indulgence of this Hon'ble court to grant him any other relief/s to which he may found entitled in the facts and circumstances of the case."

3. The petitioner is aggrieved by cancellation of licence of his PDS shop.

4. Learned counsel for the petitioner submitted that against the order of cancellation dated 29.10.2018, he has preferred a statutory appeal under the Bihar Targeted Public Distribution System (Control) Order, 2016 (hereinafter referred to as the 'Control Order, 2016') before the appropriate authority. He drew the attention of the Court to Annexure-2 which is copy of the said Appeal No. 19 PDS/2018-19.



5. At this juncture, the Court is utterly surprised as to how such appeal is filed before the Court of Collector, Muzaffarpur. The said appeal is statutory appeal under the Control Order, 2016 in which the Collector is not the Appellate Authority, rather it is the District Magistrate. Thus, filing of the appeal in the Court of Collector, Muzaffarpur is totally erroneous and in fact technically irregular. This clearly reflects sheer casualness and negligence in filing of the appeal. Learned counsel who are supposed to be aware of the law, when specific provision under which the appeal is filed is also mentioned in the memo of appeal, there can be no occasion for such complacency or mistake in filing the statutory appeal before the correct forum as prescribed in the statute. It need not be overemphasized that the appellant does not have a discretion to file the appeal wherever he thinks fit. It is the statute which has specified such forum and, thus, if at all the forum is invoked, it should be the forum as in the statute and no other forum.

6. Be that as it may, due to the error not attributable to the petitioner, the Court would not fasten him with the liability of any adverse consequences.



7. Learned counsel for the State submitted that the appeal filed by the petitioner shall be disposed off, if already not done, within one month.

8. In view thereof, the writ petition stands disposed off with a direction to the respondent no. 2, which is the correct Appellate Authority, to dispose off Appeal No. 19 PDS/2018-19 filed by the petitioner, if already not disposed, expeditiously and latest within six weeks from the date of production of a copy of this order before him, after giving due opportunity of hearing to the petitioner.

(Ahsanuddin Amanullah, J)

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