

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 5493 of 2019

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Vinod Kumar Paswan, aged about 42 Years, Male, Son of Late Bisuni
Paswan, Resident of Village-Hardia, P.S. Choutham, District-Khagaria.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Civil Supply,
Bihar, Patna.
2. The D.M., Khagaria.
3. The Sub-Divisional Officer, Khagaria (Sadar).
4. The Block Supply Officer, Choutham-Block, Khagaria

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar @ Maurya and
Mr. Ashok Kumar Mishra, Advocates

For the State : Mr. U. P. Singh, AC to SC 4

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 30-05-2019

Heard learned counsel for the petitioner and learned AC
to SC-4 for the State.

2. Though, in the writ petition the petitioner has prayed
for the following reliefs:

*“(A) to quash order dated 04.03.2009
having its letter No. 98 by which the P.D.S. License
of this petitioner has been cancelled.*



(B) to restore the P.D.S. License No. 90/96 of the petitioner which has been cancelled by the order of Sub-Division Officer.

(C) To give other (s) relief(s) as to which this petitioner is entitled for.

(D) To quash order dated 29.01.2019 passed in supply Appeal No. 16/19 passed by the D. M. Khagaria, respondent no. 2. (added in terms of the order of the Court)

but learned counsel for the petitioner submitted that after the cancellation of his licence by the Licensing Authority, he had moved in appeal before the District Magistrate, Khagaria in Appeal No. 36 of 2009-10, but because of there being fire in the Collectorate office, the records were destroyed due to which the petitioner was called upon to file another appeal which he also did being Supply Appeal No. 16 of 2019, but the same was dismissed by order dated 29.01.2019, on the ground that the petitioner did not take proper steps with regard to restoration of his appeal.

3. Having regard to the fact that the order passed in appeal by the respondent no. 2 is on record, though not formally impugned in the present writ petition, which according to learned counsel for the petitioner was due to inadvertence, the Court under its extraordinary prerogative jurisdiction under Article 226 of the Constitution of India deems it appropriate to allow the said prayer to be added. Let learned counsel for the petitioner make necessary



correction in paragraph no. 1 of the writ petition by adding such prayer as 1(D). The same be done during the course of the day.

4. Learned counsel for the petitioner submitted that he has the right of being heard on merits in his appeal which he had filed within time.

5. From the records it transpires that even in the appeal filed subsequently by the petitioner, he has clearly stated with regard to the fact that he had filed Appeal No. 36 of 2009-10, but because of fire in September, 2012, the records had been burnt for which he was not responsible.

6. Learned counsel for the State submitted that there are chances that third party right may have been created in the meantime.

7. Having considered the matter, the Court finds that a case for interference has been made out. Even if what has been submitted by learned counsel for the State that third party right may have been created, the petitioner cannot be denied his legitimate right of appeal which he had filed within the statutory period, of being considered on merits. This having been denied, the Court has no hesitation to quash the order passed by the respondent no. 2 dated 29.01.2019, by which the appeal filed by the petitioner has been dismissed, which is accordingly done.



8. The matter is remanded to the respondent no. 2 for being heard on merits, in accordance with law, provided the petitioner appears before him within three weeks from today, along with a copy of this order. The respondent no. 2 shall also take into consideration all relevant aspects, including the fact whether third party right has been created and if so, such factor shall also be considered before passing of the final order, which shall be done within three months of the petitioner appearing before the respondent no. 2.

9. The writ petition stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

P. Kumar

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