

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1050 of 2018

In

Civil Writ Jurisdiction Case No.11180 of 2018

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Deo Sahay Singh Son of Late Nazir Rai, Resident of Village- Jirakhan Tola,
Police Station- Maner, District- Patna.

... .. Appellant/s

Versus

1. The State Of Bihar and Ors
2. The District Magistrate, Patna.
3. The Sub-Divisional Officer, Danapur, District- Patna.
4. The Block Supply Officer, Maner, District- Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Mukul Prasad, Advocate
For the Respondent/s : Mr. S.Raza Ahmed, A.A.G. 5

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 04-04-2019

The appellant had a license for running a fair price shop under the Public Distribution System that was cancelled after holding an inspection and after putting the appellant to show-cause.

Learned counsel for the appellant contends that the show-cause did not disclose the contents of the enquiry and, consequently, passing of the order is vitiated. The order dated 3rd April, 2014 canceling the license came to be challenged by way of a writ petition that has given rise to the present appeal. The



writ petition has been dismissed on the ground of laches as it was filed after more than four years of the passing of the said order.

Learned counsel contends that if the procedure has been violated and the order is in violation of principles of natural justice, then in that event, the petition could not have been dismissed on the ground of laches.

The learned counsel for the State, however, submits that if the appellant was really aggrieved, he could have filed an appeal as contemplated under Clause 15(i) of the Bihar Public Distribution System Control (Amendment) Order, 2011 where the appeal lies before the District Magistrate within a period of 30 days from the date of receipt of the order.

It has been further pointed out that the 2011 Order, referred to above, now stands superseded with the promulgation of the Bihar Targeted Public Distribution System Control Order, 2016 that has come into effect from 14th March, 2016. According to Clause 34 of the said control order, all departmental notifications, including the 2011 notification, stand superseded and repealed. Consequently, even under the 2016 order, there is a provision of appeal under Clause 32 thereof. The said appeal also under the new Order lies before the



District Magistrate.

It is, therefore, the submission of the learned standing counsel that once the appellate forum, as provided under the Statute itself, was not availed of and the limitation was allowed to expire without any demur, then extraordinary jurisdiction under Article 226 of the Constitution of India cannot be invoked after four years, that too even without a valid explanation.

Having considered the submissions raised, apart from the laches, the appellant did have a right of appeal under the provision referred by the learned counsel for the State. The appellant has nowhere explained as to why he did not choose to file any appeal and waited for four years to approach this Court under Article 226 of the Constitution of India.

Over and above this, paragraph 14 of the counter affidavit filed on behalf of the State clearly discloses the lodging of an F.I.R. against the appellant being Maner P.S. Case No. 59 of 2014 for an alleged offense under Section 7 of the Essential Commodities Act. It is, therefore, evident from the facts narrated hereinabove that the appellant having failed to avail of the remedy as available under the Statute, the writ petition could not have been maintained after a lapse of four years for the relief as prayed for.



The appeal, therefore, lacks merit and is dismissed accordingly.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

K.C.Jha/Uma/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	05.04.2019
Transmission Date	N/A

