

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5617 of 2020

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Lalbabu Singh Son of Late Ramjee Singh Resident of Village- Kori, P.S.- Sandesh, District- Bhojpur at Ara.

... .. Petitioner/s

Versus

1. The State of Bihar Through the District Magistrate, Ara.
2. The Sub- Divisional Officer Sadar Ara, District- Bhojpur at Ara.
3. The Block Supply Officer Sahar-cum- Sandesh District- Bhojpur at Ara.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Manoj Kumar Pandey
For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

4 26-06-2020 Heard learned counsel for the petitioner and the
counsel appearing on behalf of the State.

Learned counsel appearing on behalf of the petitioner submits that identical issue was decided by this court in C.W.J.C. No. 5660 of 2020 dated 22.6.2020.

In order to maintain consistency, the writ application is allowed in identical terms of C.W.J.C. No. 5660 of 2020 dated 22.6.2020. The order contained in Annexure-1 is quashed. The matter is remitted back to the SDO, Sadar, Ara to take fresh decision in accordance with the order passed in C.W.J.C. No. 5660 of 2020 dated 22.6.2020.

For ready reference the order dated 22.6.2020 passed in C.W.J.C. No. 5660 of 2020 is quoted below:-



“Heard Mr. N. K. Agrawal, learned senior counsel appearing on behalf of the petitioner and Mr. Gyan Prakash Ojha, learned counsel for the State.

2. The petitioner is aggrieved by the order dated 23.04.2020, as contained in Annexure-2, whereby the P.D.S. license of the petitioner was cancelled.

3. Mr. N. K. Agrawal, learned senior counsel for the petitioner submits that the respondents have allegedly conducted inspection on 20.04.2020 and without providing a copy of the inspection report or show-cause notice, the respondents have decided to cancel the P.D.S. license of the petitioner.

4. Mr. Gyan Prakash Ojha, learned counsel for the State submits that the action was taken by respondents in view of the pandemic. However, he submits that the petitioner has alternative remedy by way of appeal.

5. It is now well settled that no order visiting evil and civil consequence like cancellation of the P.D.S. license of the petitioner without compliance of principles of natural justice is unsustainable. In the facts of this case, the Court is of the considered view that the order cancelling the P.D.S. license of the petitioner is not sustainable in law.

6. The submission of the State that the petitioner has not availed the remedy of statutory appeal, the Court is not impressed upon this submission. The Constitution Bench of the Apex Court in the case of **State of Uttar Pradesh & Ors. Vs. Mohammad Nooh**, reported in **AIR 1958 SC 86**, has already decided the issue. There are well known exceptions to the rule of exhaustion of alternative remedy i.e. violation of principles of natural justice, breach of fundamental right and order without jurisdiction. In view of the above, the alternative remedy is no bar, if the writ application has been filed without exhausting the alternative remedy of appeal.

7. Article 226 of the Constitution of India does not in any manner preclude the Constitutional



Court from passing order in the present writ jurisdiction.

8. Thus, the order cancelling the P.D.S. license of the petitioner cannot be sustained. Accordingly, Annexure-2 is quashed. The matter is remitted back to the S.D.O., Sadar Ara, Bhojpur to take a fresh decision in accordance with law after providing opportunity of hearing to the petitioner.

9. However, quashing of Annexure-2 will not automatically restore the P.D.S. license of the petitioner. Restoration of the P.D.S. license will depend upon the fresh decision taken by the S.D.O., Sadar Ara, Bhojpur after opportunity of hearing to the petitioner.

10. Necessary decision in this regard must be taken by the respondents within a maximum period of one month from the date of receipt/production of a copy of this order.

11. With the aforesaid, the writ application stands allowed and disposed of.”

The present application is allowed and disposed of in terms of order passed in C.W.J.C. No. 5660 of 2020 dated 22.6.2020.

(Anil Kumar Upadhyay, J)

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