

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5660 of 2020

=====

Jairam Singh @ Jairam Prasad Singh, Son of Late Kishun Singh, Resident of
Village - Dihra, P.S.- Azimabad, 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 cum Assistant District Supply officer Agiaown,
District- Bhojpur at Ara.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. N. K. Agrawal, Sr. Advocate
		Mr. Manoj Kumar Pandey, Advocate
For the Respondent/s	:	Mr. Gyan Prakash Ojha

=====

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

3 22-06-2020 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 civil 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.

(Anil Kumar Upadhyay, J)

uday/-

U			
---	--	--	--

