

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6163 of 2020

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1. Krishna Ranjan Kumar Singh Son of Late Shashibhushan Kumar Singh, Resident of Village- Kashi Bazar Bazrang Nagar, Block- Singhwalia, P.O. and P.S. Bhagwanbazar, District- Chhapra, Saran. Working as Revenue Karamchari of Sidhwaliya Circle, District- Gopalganj.
 2. Md. Jafir Aalam, Son of Late Md. Ayub, Resident of Village- Garhaiya, P.O. Pachpakdi, P.S.- Dhaka, District- East Champaran. Working as Revenue Karamchari of Sidhwaliya Circle, District- Gopalganj.
 3. Kailash Ram, Son of Late Badhan Ram, Resident of Village and P.O.- Lamichaur, P.S.- Bhore, District- Gopalganj. Working as Revenue Karamchari of Sidhwaliya Circle, District- Gopalganj.
 4. Raju Ram, Son of Late Dulabh Ram, Resident of Village - Amwa Vijaypur, P.O.- Rampur Daud, P.S.- Kuchaikot, District- Gopalganj. Working as Revenue Karamchari of Sidhwaliya Circle, District- Gopalganj.
 5. Rajkishor Singh, Son of Late Shri Vinda Singh, Resident of Village- Chandrahiya, P.O.- Dalpat Vishunpur, Block- Dhaka, District- East Champaran. Working as Revenue Karamchari of Sidhwaliya Circle, District- Gopalganj.
 6. Rajeshwar Prasad Sah, Son of Shivnandan Sah, Resident of Village- Raghunathpur, P.O.- Motihari, Block- Turkauliya, District- East Champaran. Working as Revenue Karamchari of Sidhwaliya Circle, District- Gopalganj.
 7. Md. Sahid Hussain, Son of Late Aabid Hussain, Resident of Village and Post- Kumma, P.S. Sursand, District- Sitamarhi. Working as Revenue Karamchari of Kuchaikot Circle, District Gopalganj.
 8. Vinod Kumar, Son of Gulzar Mahto, Resident of Village and Post- Babura, P.S. Barhara, District- Arrah. Working as Revenue Karamchari of Kuchaikot Circle, District Gopalganj.
 9. Laxmi Narayan Singh, Son of Late Deena Nath Singh, Resident of Village and Post- Bharbhura, P.S. Sonpur, District- Saran. Working as Revenue Karamchari of Kuchaikot Circle, District Gopalganj.
 10. Suresh Kumar Yadav, Son of Bindeshwari Yadav, Resident of Village- Dehiyan, P.O.- Dindyalpur, P.S.- G.B. Nagar (Takhara), District- Siwan. Working as Revenue Karamchari of Kuchaikot Circle, District Gopalganj.
 11. Raghunath Singh, Son of Late Gulab Singh, Resident of Village and P.O. Bankatta Jagirdari, Via- Bhore, District- Gopalganj. Working as Revenue Karamchari of Kuchaikot Circle, District Gopalganj.
 12. Bhola Prasad, Son of Late Tejraj Raut, Resident of Bharwaliya, P.O.- Palnwa, District- East Champaran. Working as Revenue Karamchari of Kuchaikot Circle, District Gopalganj.
 13. Jay Ram Shah, Son of Late Sita Ram Sah, Resident of Village- Parewa, P.O. Kapurpakdi, Via- Dhaka, P.S.- Shikarganj, District- East Champaran. Working as Revenue Karamchari of Kuchaikot Circle, District Gopalganj.
 14. Janardan Rai, Son of Late Babban Rai, Resident of Village- SinghaTola, Panditpur, Post- Hathapa, District- Gopalganj. Working as Revenue



Karamchari of Kuchaikot Circle, District Gopalganj.

15. Braj Kishore Rai, Son of Late Sita Ray Ram, Resident of Village- Bhoratpura, P.O.- Sisai, Via- Bhore, Gopalganj. Working as Revenue Karamchari of Kuchaikot Circle, District Gopalganj.
16. Vikas Kumar Kashyap, Son of Late Arun Kumar Singh, Resident of Village and Post- Devapur, P.S. Barauli, District- Gopalganj. Working as Revenue Karamchari of Kuchaikot Circle, District Gopalganj.
17. Rampravesh Singh, Son of Late Mukti Singh, Resident of Village- Rajpur, P.O.- Songadhwa, P.S. Phulwaria, District- Gopalganj. Working as Revenue Karamchari of Kuchaikot Circle, District Gopalganj.
18. Shrinivash Prasad, Son of Late Satyanarayan Prasad, Resident of Village - Kutulpur, P.O.- Vishunpura Bazar, P.O.- Singhwalia, District- Gopalganj. Working as Revenue Karamchari of Kuchaikot Circle, District Gopalganj.
19. Md. Wakil Aktar, Son of Md. Hussain, Resident of Village- Raksha Raheempur, P.O. and P.S.- Dhala, District- East Champaran. Working as Revenue Karamchari of Kuchaikot Circle, District Gopalganj.
20. Rakesh Kumar, Son of Late Raj Kishore Rawat, Resident of Village- Jaropur Dukhharan, P.S. Jaropur, District- Gopalganj. Working as Revenue Karamchari of Kuchaikot Circle, District Gopalganj.
21. Vinod Rai, Son of Kashi Naresh Singh, Resident of Village- Saraiya Ward No. 3, Gopalganj, Block and P.O. and District- Gopalganj. Working as Revenue Karamchari of Baikunthpur Circle, District Gopalganj.
22. Ishwar Prasad, Son of Shri Muni Prasad, Resident of Village- Vishnupur, P.O.- Ihulum, Block- Makhdumpur, District- Gopalganj. Working as Revenue Karamchari of Baikunthpur Circle, District Gopalganj.
23. Ramdhar Singh Raman, Son of Dhupan Narayan Singh, Resident of Village- Sisai, P.O.- Dumarsan, P.S. and Anchal- Mashakh, District- Chhapra. Working as Revenue Karamchari of Baikunthpur Circle, District Gopalganj.
24. Surendra Singh, Son of Late Mahendra Singh, Resident of Village- Aamwa, P.O.- Kundwachatpur, P.S. and Anchal- Chhodashahan, District- East Champaran. Working as Revenue Karamchari of Baikunthpur Circle, District Gopalganj.
25. Bharat Prasad, Son of Late Moti Lal Prasad, Resident of Village- Pawri, P.O. Nalwa, P.S.- Malhampur, Anchal- Singhwalia, District- Gopalganj. Working as Revenue Karamchari of Baikunthpur Circle, District Gopalganj.
26. Jatashankar Prasad, Son of Ramwali Mahto, Resident of Village- Sukulwa, P.O.- Basdilwa, P.S. and Anchal and District- Gopalganj. Working as Revenue Karamchari of Baikunthpur Circle, District Gopalganj.
27. Manoj Kumar Tripathi, Son of Indrasan Tripathi, Resident of Village- Dasauti, P.S.- Karaiya, Anchal- Karaiya, District- Gopalganj. Working as Revenue Karamchari of Baikunthpur Circle, District Gopalganj.
28. Sunil Kumar, Son of Late Malik Sharma, Resident of Village- Saharsa Kapda Tola, P.O. and P.S. and Anchal- Saharsa, District- Saharsa. Revenue Karamchari of Baikunthpur Circle, District Gopalganj.
29. Dinanath Ram, Son of Late Ramdev, Resident of Village- Pihori, P.O.- Begra, P.S. Thave, Anchal- Mafa, District- Gopalganj. Revenue Karamchari



of Baikunthpur Circle, District Gopalganj.

30. Ishmohamad Ansari, Son of Late Mohar Ansari, Resident of Village-Bharpurwa (Barai Tola), P.S. Vijaypur, P.O.- Bharpurwa, District-Gopalganj. working as Revenue Karamchhari of Baikunthpur Circle, District Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar Bihar.
2. The District Magistrate, Gopalganj.
3. The Sub Divisional Officer, Gopalganj.
4. The Additional Collector, Gopalganj.
5. The Deputy Collector Land Reforms, Gopalganj Sadar, District - Gopalganj.
6. The Circle Officer, Singhwalia, District - Gopalganj.
7. The Circle Officer, Kuchaikot, District - Gopalganj.
8. The Circle Officer, Baikunthpur, District - Gopalganj.
9. The District Treasury Officer, Gopalganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ranjan Kumar Srivastava
For the Respondent/s : Mr.Lalit Kishore (Ag)

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 01-09-2020

The petitioners have filed the instant writ petition for the following reliefs :-

“(A) To issue an appropriate writ/writs, order/s direction/s in the nature of Certiorari for quashing the orders dated 10.12.2019 (Annexure-1, 2 & 3) passed in RTPJ Suo-Moto Case No. 6 of 2019-2020, Case No. 8 of 2019-2020, Case No. 5 of 2019-2020, respectively, passed by the Respondent No.5 i.e. the Deputy Collector, Land Reforms, Gopalganj Sadar, whereby and whereunder



consolidated penalty of Rs.3,47,000/- (relating to petitioner no.1 to 6), Rs.10,50,000/- (relating to petitioner no.7 to 20) and Rs.9,66,000/- (relating to petitioner no. 21 to 30) has been imposed and direction has been issued for deducting the said amount from the salary of the petitioners without giving show cause notice which violates the principle of natural justice and due to this reason petitioners are not getting their salary, as the petitioners are working as Revenue Karamchari in different Panchayats of Gopalganj District and at present they are cooperating with the warriors of Novel Corona Virus Pandemic (COVID-19) in their Panchayats without getting salary for last 05 months i.e. since December-2019.

- (B) To issue an appropriate writ/writs, order/s direction/s in the nature of Mandamus for commanding/directing the Respondents for making current payment of salary to the petitioners due since December-2019 without deducting the penalty amounts which has been imposed by the Respondent No.5 i.e. Deputy Collector, Land Reforms, Gopalganj in illegal and arbitrary manner.



- (C) Further for staying the operation of the impugned orders dated 10.12.2019 passed in RTPJ Suo-Moto Case No. 6 of 2019-2020, Case No. 8 of 2019-2020, Case No. 5 of 2019-2020, respectively till disposal of the Writ Application.
- (D) To any other relief/s to which the Petitioners is found entitled to.”

2. The undisputed facts of the case are as under :-

- (a) Vide Memo No. 574 dated 22.06.2019 all the petitioners have been transferred by the order of the District Magistrate, Gopalganj from one Circle Office to another Circle Office in the district of Gopalganj. In obedience to the transfer orders, they have joined and took over the charge at their new place of posting in July, 2019.
- (b) The petitioners no. 1 to 6 are working as Halka Revenue Karamchari at different Panchayat (Halka) in Sidhwaliya Circle, petitioners no. 7 to 20 are working as Halka Revenue Karamchari at different Panchayats in Kuchaikot Circle and petitioners no. 21 to 30 are working as Halka Revenue Karamchari at different Panchayat (Halka) in Baikunthpur Circle.



- (c) During monitoring under Right to Public Services Act, 2011 (for short “the Act”) with respect to the mutation matter of three Circle Offices i.e. Kuchaikot, Sidhwaliya and Baikunthpur by the respondent no.5 on 10.12.2019. It was found that the services relating to online mutation has not had not been disposed of within the stipulated time by the concerned Halka Revenue Karamchari and Circle Officers.
- (d) Accordingly, respondent no.5, i.e. the Deputy Collector, Land Reforms, Gopalganj Sadar, Gopalganj suo motu passed the impugned orders on 10.12.2019 imposing penalty of Rs.3,47,000/-, Rs.10,50,000/- and Rs.9,66,000/- in RTPJ Suo-Moto Case No. 6 of 2019-2020, Case No. 8 of 2019-2020 and Case No. 5 of 2019-2020 respectively.

3. Mr. Ranjan Kumar Srivastava, learned counsel appearing for the petitioners submitted that the petitioners are Revenue Karamcharis. They are not the designated officers for passing orders on application for mutation. It is the Circle Officer, who is the competent designated authority in this regard. According to him, as per Chapter V, Rule 3 and 6 of the Bihar Land Mutation Rules, 2012, it is the Circle Officer, who is the competent authority for disposing of online mutation applications



on the basis of enquiry report of the Halka Karamchari. He further contended that penalty has been imposed for those matters, which arose prior to July, 2019, i.e. prior to joining of the petitioners in the respective places. He also contended that the petitioners are not getting current salary due to impugned orders for deduction from salary since December, 2019.

4. A counter affidavit has been filed on behalf of the respondents wherein it is contended that as a matter of fact the Revenue Karamchari initiates the process with report of the details of the land in the mutation matters. After the report is submitted by them, the matter comes in the login of Circle Inspector. Thereafter, the matter ultimately comes in the login of Circle Officer for final disposal. It is further contended that the writ petitioners have wrongly stated that the fine has been imposed only upon Halka Karamcharis whereas the matter of fact is that fine is equally imposed on Circle Officers of Sidhwalia, Kuchaikote, Barauli and Baikunthpur. It is also contended in the counter affidavit that the writ petitioners have wrongly submitted that penalty has been imposed for those matters which arose prior to July, 2019. As a matter of fact, fine has been imposed for cases which have not been disposed of within the stipulated time. It is also contended that there is no restriction to withdraw the salary rather the



petitioners have been directed to deposit the amount of fine themselves through treasury challan in treasury as per order, but they have failed to comply the order.

5. Mr. Ajay, learned Government Advocate-V appearing for the State submitted that inspite of the fact that several directions were given from time to time to the Designated Public Servants and their subordinates by the higher authorities of the district, the public servants and their subordinates did not comply with those directions. He contended that the writ petitioners were found guilty of non-disposal of mutation cases within the stipulated time. Hence, no illegality can be found with the impugned orders whereby they have been imposed penalty as mentioned in the writ petition.

6. In reply, learned counsel appearing for the petitioners submitted that the impugned orders of penalty dated 10.12.2019 have been passed without any proceeding and without giving notice to the petitioners, which violates the principles of natural justice. He contended that there is no provision of passing suo motu order under the Act. In this case, the respondent no.5 has passed suo motu orders, which are without jurisdiction and not permissible in the eyes of law. He has further contended that the petitioners are Revenue Karamcharis and not Designated Public



Servants under the Act. Hence, no penalty could have been imposed against them.

7. I have heard learned counsel for the parties and perused the materials on record.

8. The Act enacted by the legislature provides for the delivery of notified public services to the people of the State within the stipulated time limit and for the matters connected therewith and incidental thereto.

9. The term “Designated Public Servant” has been defined under Section 2(b) of the Act, which reads as under :-

“2(b) "Designated Public Servant" means an authority including one belonging to the local self government and organizations, fully or partially funded by the State Government, notified as such for providing the service under Section-3.”

10. The term “Right to Public Service” has been defined under Section 2(f) of the Act, which reads as under :-

“2(f) "Right to Public Service" means right to obtain the service notified by the government under this Act from time to time within the stipulated time limit as described under Section-4.”

11. The term “Service” has been defined under Section 2(g) of the Act, which reads as under :-



“2(g) "Service" means any service notified as per provisions under Section-3.”

12. The term "Stipulated time limit" has been defined under Section 2(i) of the Act, which reads as under :-

“2(i) "Stipulated time limit" means maximum time to provide the service by the Designated Public Servant or to decide the appeal by the Appellate Authority and Reviewing Authority as notified under Section-3.”

13. The other relevant provisions under the Act are Sections 3, 4, 5, 6 and 7, which read as under :-

“3. Notification of services, Designated Public Servant, Appellate Authority, and Reviewing Authority and Stipulated Time Limits.- The State Government may, from time to time, notify the services including provisions for fast track service delivery (“Tatkal Sewa”), Designated Public Servants, Appellate Authorities, Reviewing Authorities Stipulated Time Limits, and the area of the State to which this Act shall apply.

4. *Right to obtain service within stipulated time limit.*- The Designated Public Servant shall provide the service notified, under Section-3 to the person eligible to obtain the service, within the stipulated time limit.

5. *Providing services in stipulated time limit.* - (1) Any application being filed for obtaining services notified under the Act will be treated as application under the Act. Stipulated Time Limit, if not explained otherwise in



the notification under sec.-3 shall start from the date when required application for notified service is submitted to the Designated Public Servant or to a person subordinate to him/her authorized to receive the application. Such application shall be duly acknowledged.

(2) The Designated Public Servant on receipt of an application under sub-section (1) shall within the Stipulated Time Limit provide service or reject the application and in case of rejection of application, shall record the reasons in writing and intimate to the applicant.

6. *Appeal.* - (1) Any person, whose application is rejected under sub-section (2) of section-5 or who is not provided the service within the stipulated time limit, may file an appeal to the Appellate Authority within thirty days from the date of rejection of application or the expiry of the stipulated time limit. Filing of such appeal shall be duly acknowledged by the Appellate Authority by providing the Appellant signed receipt of the same:

Provided that the Appellate Authority may admit the appeal after the expiry of the period of thirty days if he/she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time:

Provided further that in case of delay beyond the time limit stipulated by notification under section-3 the applicant may file an appeal against delay as per the provisions under this Act:



Provided further also that, in case of rejection of an application for a service for which any other law for the time being in force prescribes remedy, the applicant shall follow the process under such law for the time being in force.

(2) (a) The Appellate Authority may order the Designated Public Servant to provide the service within the specified period or may reject the appeal.

(b) Along with the order to provide service, the Appellate Authority may impose penalty according to the provisions of Section-7 of this Act.

(3) The Designated Public Servant or the Applicant aggrieved by any order of the Appellate Authority, may make a second appeal within 60 (sixty) days from the date of that order to the Reviewing Authority, who shall dispose the appeal according to the prescribed procedure:

Provided that the Reviewing Authority may entertain the second appeal after the expiry of 60 (sixty) days, if he/she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(4) If the Designated Public Servant does not comply with provisions of the order for providing the service under sub- section (2) of Section-6, then the applicant aggrieved from such non-compliance may submit an application directly to the Reviewing Authority. This application shall be disposed of in the manner prescribed for second appeal.



(5) The Appellate Authority and Reviewing Authority shall while deciding an appeal under this section, have the same powers as are vested in civil court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely :-

- (a) requiring the production and inspection of documents;
- (b) issuing summons for hearing to the Designated Public Servant and appellant; and
- (c) any other matter which may be prescribed.

(6) In any appeal proceedings, the onus to prove that a delay or denial of service was justified shall be on the Designated Public Servant or the Appellate Authority, as the case may be, who delayed or denied the service.

7. Penalty.- (1)(a) Where the Appellate Authority is of the opinion that the Designated Public Servant has failed to provide service without sufficient and reasonable cause, then he/she may impose a lump sum penalty at the rate specified from time to time as prescribed in the rules framed under this Act from time to time.

(b) Where the Appellate Authority is of the opinion that the Designated Public Servant has caused delay in providing the service, then he/she may impose a penalty at the rate specified from time to time and as prescribed in the rules framed under this Act from time to time for such delay on the Designated Public Servant:



Provided that the Designated Public Servant shall be given a reasonable opportunity of being heard before any penalty is imposed on him/her.

(2) Where the Reviewing Authority is of the opinion that the Appellate Authority has failed to decide the appeal within the stipulated time limit without any sufficient and reasonable cause, then he/she may impose a penalty on Appellate Authority at the rate specified from time to time and as prescribed in the rules framed under this Act:

Provided that the Appellate Authority shall be given a reasonable opportunity of being heard before any penalty is imposed on him/her.

(3) The penalty as imposed under the above provisions of the Act shall be charged from the Designated Public Servant, Appellate Authority and concerned Subordinate staff as the case may be, and in the proportion to be decided by the Appellate or Reviewing Authority, as the case may be, and as prescribed in the Rules framed under this Act from time to time.

(4) The penalty so imposed will be in addition to that prescribed in any other Act, rules, regulations and notifications already existing.”

14. In exercise of the powers conferred under Section 3 of the Act, the State Government has notified the name of services, designated public servants, stipulated time limit, appellate authorities, time limit for disposal of appeal, reviewing authorities



and the stipulated time limit for reviewing authorities vide extraordinary gazette notification dated 16th May, 2011. It would be evident from perusal of the aforesaid gazette notification that for the disposal of the mutation cases the concerned Circle Officer has been appointed as Designated Public Servant and the concerned Deputy Collector, Land Reforms has been made the Appellate Authority. The maximum stipulated time for disposal of mutation case, which does not involve any objection has been fixed as 18 working days and the maximum stipulated time for the disposal of mutation case in which objection has been filed has been fixed as 30 working days.

15. A perusal of Sections 4 and 5 of the Act would make it clear that it is the designated public servant, who has been made responsible for providing the service notified under Section 3 to the persons eligible to obtain service within the stipulated time. He is required to provide service within the stipulated time or to reject the application and in case of rejection of the application, to record the reasons in writing and inform the applicant.

16. Further, Section 6 of the Act provides that any person, whose application is rejected under sub-section (2) of section-5 or who is not provided the service within the stipulated time limit, may file an appeal to the appellate authority within



thirty days from the date of rejection of application or the expiry of the stipulated time limit.

17. Section 7(1)(a) of the Act provides that where the appellate authority is of the opinion that the designated public servant has failed to provide service without sufficient and reasonable cause, then he/she may impose a lump sum penalty at the rate specified from time to time as prescribed in the rules framed under this Act from time to time.

18. Further, Section 7(1)(b) of the Act provides that where the appellate authority is of the opinion that the designated public servant has caused delay in providing the service, then he/she may impose a penalty at the rate specified from time to time and as prescribed in the rules framed under this Act from time to time for such delay on the designated public servant. However, the proviso to Section 7(1) stipulates that the designated public servant shall be given a reasonable opportunity of being heard before any penalty is imposed on him/her.

19. It is, thus, manifest that Halka Revenue Karamchari has not been made designated public servant under the Act for providing the services in case of mutation application. It is the Circle Officer, who has been made the designated public servant. The Act confers jurisdiction upon the appellate authority to impose



penalty at the rate specified from time to time as prescribed in the rules framed under the Act from time to time on the designated public servant for causing delay in providing the service. The appellate authority has not been vested with any jurisdiction to impose penalty against any officer/employee, who has not been notified as the designated public servant under the Act.

20. In that view of the matter, in the instant case, the respondent no.5 completely lacked jurisdiction to impose penalty upon the petitioners, who are Halka Revenue Karamcharis under the Act.

21. I also find force in the submission of the learned counsel appearing for the petitioners that there is no provision for passing suo motu order under the Act. As per Section 6 of the Act, any person whose application is rejected by the designated public servant under sub-section (2) of Section 5 of the Act or who is not provided the service within the stipulated time limit, may file an appeal to the appellate authority within 30 days from the date of rejection of the application or the expiry of the stipulated time limit and only after that, the appellate authority can proceed in the matter. The proviso to Section 6 of the Act confers upon the appellate authority jurisdiction to admit appeal even after expiry of 30 days if he/she is satisfied that the appellant was prevented by



sufficient cause from filing the appeal within the stipulated time. However, there is no provision under the Act, which confers any jurisdiction upon the appellate authority to take up the appeal suo motu and decide the same.

22. Moreover, the proviso to Section 7(1) of the Act clearly mandates that the designated public servant must be given a reasonable opportunity of being heard by the appellate authority before any penalty is imposed on him/her.

23. The orders impugned are bad for the following reasons :-

- (a) Firstly, the petitioners are not the designated public servant and they do not come within the ambit of the Act for the purposes of being imposed penalty for not providing services within the stipulated time limit.
- (b) Secondly, the orders impugned have been passed by the respondent no.5 suo motu whereas the Act does not provide any suo motu jurisdiction to the appellate authority.
- (c) Thirdly, the orders impugned have been passed in complete violation of the principles of natural justice and provisions prescribed under Section 7 of the Act.

24. In that view of the matter, the impugned orders cannot be sustained. They are set aside, accordingly.



25. The writ application stands allowed with cost of Rs.10,000/- to be paid by the respondent no.5 to the Patna High Court Legal Aid Committee within 8 weeks from today.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	14.09.2020
Transmission Date	

