

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8046 of 2020

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Dipan Ram son of Jhallu Ram Resident of Salhapur, Devaria, District-
Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Food and Consumer Protection Department, Old Secretariat, Government of Bihar, Patna.
2. The Secretary, Food and Consumer Protection Department, Old Secretariat, Patna.
3. The District Magistrate, Muzaffarpur.
4. The Sub- Divisional Magistrate (West), Muzaffarpur.
5. The District Supply Officer, Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sanjeet Kumar, Adv.
For the State : Mr. Alok Ranjan, AC to AAG-5

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

3 15-04-2021 Heard learned counsel for the petitioner and Mr. Alok Ranjan, learned AC to AAG-5.

The petitioner is aggrieved by the order contained in Memo No. 753 dated 01.06.2020 (Annexure-P/1) whereby the Sub-Divisional Magistrate (West), Muzaffarpur has cancelled the PDS licence of the petitioner.

Learned counsel for the petitioner has highlighted manifold infirmities in the decision making process. He submits that on the basis of so-called inspection of the shop of petitioner on 03.04.2020, the respondent proceeded against him and a show cause notice was issued on 16.04.2020. Learned counsel submits that the allegation levelled in the show cause is patently false and in his reply to the show cause, petitioner has categorically denied all the



allegations.

Learned counsel for the petitioner refers to the show cause reply contained in Annexure-P/3. He submits with reference to his detailed show cause reply (Annexure-P/3) that the explanation furnished by the petitioner was not examined in its proper perspective and the impugned order cancelling the PDS licence of the petitioner was passed vide Annexure-P/1 without consideration of show cause reply.

Learned counsel appearing on behalf of the State has submitted that there is provision of appeal and without exhausting the remedy of appeal before the appellate forum, petitioner has approached this Court and as such the present application is not maintainable. He further submits that the content of the inquiry report of the District Supply Officer was enclosed with the show cause notice (Annexure-P/2) and as such he submits that it would be appropriate for the petitioner to approach the appellate forum for adjudication of the issue of cancellation of PDS licence.

The jurisdiction under Article 226 of the Constitution of India is preliminary jurisdiction and alternative remedy is no bar in exercising writ jurisdiction. It is self-imposed restriction that the Court ordinarily does not entertain the writ application where there is provision for alternative remedy but in a case where there is totally non-application of mind to the explanation furnished by the petitioner, vide Annexure- P/3, while passing the order, the Court is



constrained to hold that it is a case of violation of principle of natural justice, particularly, in view of the judgment of the Apex Court in case of *S.N. Mukharjee Vs. the Union of India* reported in *AIR 1990 SC 1984*, which is settler on the point that reasoned and speaking order should be passed on third principles of natural justice.

It is also well settled way back in 1958 in the case of *State of U.P. Vs. Mohd. Nooh* reported in *AIR 1958 SC 86*, alternative remedy is no bar in case of principle of natural justice.

In the aforesaid circumstance, the Court is satisfied that the impugned order contained in Annexure-P/1 is in violation of principle of natural justice and as such the order contained in Annexure-P/1 is hereby quashed.

However, liberty shall be available to the respondents to take appropriate decision in accordance with law after an opportunity of hearing to the petitioner if there is such occasion.

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

(Anil Kumar Upadhyay, J)

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