

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8769 of 2020

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Nagendra Prasad Gupta Son of Banwari Sahu, Resident of Village - Gonpura,
P.S. - Phulwari Sharif, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection Department, Old Secretariat, Patna.
2. The District Magistrate, Patna.
3. The Sub-Divisional Officer, Patna Sadar, District - Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rajeev Kumar Labh, Adv.
For the Respondent/s : Mr.Lalit Kishore AG

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 13-01-2021

Heard learned counsel for the petitioner and learned counsel for the respondents.

The petitioner's Public Distribution System License has been cancelled by the impugned order dated 25.01.2020. The petitioner has approached this Court seeking quashing of the said order.

Penal consequence of the cancellation of his license is based on allegation that he has misappropriated the foodgrains supplied to him for distribution under the Public Distribution System. The order, as per petitioner's counsel is without even affording the petitioner, an opportunity of hearing in terms of the provisions contained in Rule 27 (ii) of the Bihar Targeted



Public Distribution System (Control) Order, 2016 (hereinafter referred to as the 'Control Order').

The learned counsel for the State, based on the averments made in the counter affidavit, raises an objection to filing of an instant writ petition by submitting that the petitioner has adequate alternative remedy of appeal under the Control Order. Without exhausting the remedy of appeal, he has directly rushed to this Court. The submission is that very severe allegations were made against the petitioner of misappropriating the foodgrains, which he has diverted to his own brothers rice mill. Keeping in view the serious allegations against the petitioner, this Court may not exercise writ jurisdiction in favour of the petitioner. The counsel for the State has vehemently raised an objection regarding the writ petition being barred on the ground of alternative remedy of appeal available to the petitioner under Rule 32 of the Control Order.

This Court is conscious of the legal position that the scope of judicial review is confined to the decision making process, and not the decision itself.

Insofar as objection regarding writ not being maintainable due to available alternative remedy, is concerned, this Court would observe that under Article 226 of the



Constitution of India, this Court exercises plenary jurisdiction to issue orders, directions and writs for the enforcement of fundamental rights and for “any other purpose”. It is trite law that there is no absolute bar to exercise of writ jurisdiction because alternative remedy is available to the petitioner. Such objection has to be considered, in the facts and circumstances of each case. Exercise of jurisdiction is discretionary and where there exists adequate alternative remedy, the Courts normally refuse to invoke Article 226 of the Constitution of India in favour of a petitioner. This, however, does not impose an absolute bar as exclusion is a rule of discretion. In an appropriate case the writ Court cannot be rendered helpless on account of existence of an alternative remedy. The jurisdiction vested by the Constitution cannot be divested merely by an alternative remedy, as injustice has to be struck down so as to sustain the rule of law.

By now the law is well settled by decisions of the Apex Court that in at least four circumstances, which this Court is referring to hereinafter, the Constitutional Courts under Article 226, may exercise its discretion to invoke its writ jurisdiction in favour of the petitioner before it, namely:

- (i) where the writ petition seeks enforcement of



fundamental rights

(ii) where there is violation of the principles of natural justice

(iii) where the order or proceedings against which the writ petition has been filed is without jurisdiction, or

(iv) where the vires of an Act is the subject of the writ proceedings.

Some precedents of the Apex Court laying down this settled legal position and reiterating the same are to be found in ***Union of India Vs. Tania Construction (P) Ltd. (2011) 5 SCC 697, M P State Agro Industries Development Corporation Ltd. vs. Jahan Khan (2007)10 SCC 88, L.K.Verma vs. H.M.T. Ltd. (2006)2 SCC 269.***

After filing of the counter affidavit, the admitted position that emerges is that no show cause notice or opportunity of hearing was granted to the petitioner. The admitted fact is that the order of the Sub Divisional Officer dated 25.01.2020, is violative of the principle of natural justice, apart from being violative of Rule 27(ii) of the Control Order. These facts, viewed with the settled legal position in the background, make out a case for exercise of writ jurisdiction in favour of the petitioner for quashing of the impugned order dated 25.01.2020.



The order of the Sub Divisional Officer, Patna Sadar dated 25.01.2020 cancelling the petitioner’s Public Distribution System License stands quashed. The petitioner is entitled to the consequential benefit of restoration of his license. The Authority, however, would be at liberty to proceed against the petitioner in accordance with law.

The writ petition stands allowed.

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	09.02.2021
Transmission Date	

