

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11732 of 2019

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Dinesh Kumar Yadav @ Dinesh Yadav Son of Nandlal Yadav, Resident of Village- Khutauna, Ward No. 8, Balardiha, Police Station- Bithan, District- Samastipur.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Food and Civil Supplies Department, Bihar, Patna.
2. The Divisional Commissioner, Darbhanga.
3. The District Magistrate, Samastipur.
4. The District Supply Officer, Samastipur.
5. The Sub Divisional Magistrate, Rosera, Samastipur.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Pankaj Kumar Jha
For the Respondent State:		Mr. Arvind Ujjwal (Sc4)
		Mr. Upendra Pratap Singh, AC to SC-4

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

5 02-07-2021 The petitioner has put to challenge an order dated 28.03.2019 passed by the District Magistrate, Samastipur, in P.D.S. Appeal No. 304 of 2017, whereby the petitioner's appeal filed under Order 32 of Bihar Targetted P.D.S. Control Order, 2016 (hereinafter referred to as '2016 Control Order') against an order of the Sub Divisional Officer, Rosera, Samastipur, cancelling the petitioner's licence to run a P.D.S. shop has been rejected. The impugned order has been brought on record by way of Annexure-11 to the writ application.

2. Certain facts relevant for adjudication of the present dispute are not at all in dispute. The petitioner held



licence to run a P.D.S. shop. Pursuant to a complaint filed against the petitioner, he was put to show cause notice asking as to why his licence be not cancelled, in accordance with the provisions under 2016 Control Order. The petitioner filed his show cause reply. The Sub Divisional Officer, Rosera, Samastipur, by an order dated 23.12.2016 cancelled the petitioner's licence on the allegation that on the date of inspection, his shop was found closed and beneficiaries were complaining about irregularities committed by the petitioner in distribution of food grains and Kerosene oil.

3. The petitioner preferred an appeal before the appellate authority giving rise to P.D.S. Appeal No. 3 of 2017. The District Magistrate, noticing infirmity in the order passed by the Sub Divisional Officer, Rosera, allowed the appeal by an order dated 21.07.2017 and remanded the matter back for fresh hearing and disposal.

4. In compliance of the order of the appellate authority, by a subsequent order dated 22.11.2017, the Sub Divisional Officer, Rosera, reiterated its decision to cancel the petitioner's licence to run P.D.S. shop. Aggrieved by the said order, the petitioner again preferred an appeal before the District Magistrate, Samastipur, giving rise to P.D.S. Appeal No. 304 of



2017, which has been dismissed by the impugned order dated 28.03.2019.

5. Drawing my attention to the impugned order dated 28.03.2019, learned counsel appearing on behalf of the petitioner has argued that there is complete non-application of mind inasmuch as though the points raised by the petitioner for challenging the order passed by the Sub Divisional Officer has been noted by the appellate authority in his order, it has not at all discussed either of the points and has simply dismissed the appeal without assigning any cogent reason. He has submitted that the petitioner's valuable statutory right to appeal has been rendered meaningless by the impugned order passed by the District Magistrate, which is non-speaking on the face of it.

6. Learned counsel representing the State of Bihar, on the other hand, has submitted that the appellate authority has taken into account the entire materials available before him and after duly considering the same, he has passed the impugned order dismissing the petitioner's appeal. He has further submitted that the petitioner had remedy of preferring revision against the impugned order before the Divisional Commissioner under 2016 Control Order, which he has not availed and this writ application deserves to be dismissed on the ground of



failure on the part of the petitioner to have availed statutory alternative remedy before approaching this Court under Article 226 of the Constitution of India.

7. I have carefully perused the impugned order. I find substance in submission made on behalf of the petitioner that there is total non-application of mind by the appellate authority. It has not at all discussed in its order, even briefly, as to how the points taken on behalf of the petitioner in his memo of appeal were not acceptable. It has simply referred to the facts leading to filing of the appeal and has dismissed the appeal, vaguely mentioning that the Sub Divisional Officer has passed a speaking order after considering all aspects of the matter and, therefore, no interference was required.

8. The impugned order, being unreasoned and non-speaking, requires interference by this Court. Availability of alternative remedy is not a bar for this Court to entertain a writ application under Article 226 of the Constitution of India, particularly when the order appears to be palpably illegal, passed in complete violation of the principles of natural justice. The statutory right to appeal under 2016 Control Order is a valuable right and the appellate authority has a duty to consider the points raised by an appellant against the order of the original



authority. That having not been done, the impugned order requires interference and is accordingly set aside.

9. The matter is remanded back to the appellant authority to pass an order afresh dealing specifically with the points raised by the appellant in his memo of appeal and such other points as taken on behalf of the appellant, which have been mentioned in the impugned order itself. Such order must be passed by the appellate authority within three months from the date of receipt/production of a copy of this order.

10. This application is allowed with the observation and direction as above.

11. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

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