

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3648 of 2020

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Shambhu Prasad Yadav @ Shambhu Yadav S/o Sri Sukhlal Yadav Resident of
Village- Dighiya, Ward No.04, Gram Panchayat- Siradeyapatti, P.S.- Saharsa
Sadar, District- Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Food and Consumer Protection
Department, Government of Bihar, Patna.
2. The Collector, Saharsa.
3. The Sub Divisional Officer, Sadar Sahara.
4. The Block Supply Officer, Kahra.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. N.K. Agarwal, Sr. adv.
For the Respondent/s : Mr. Upendra Pratap Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

2 04-07-2022 Heard Mr. N.K. Agarwal, the learned senior

Advocate for the petitioner and Mr. Upendra Pratap Singh, the

learned counsel for the State.

The learned counsel for the petitioner has drawn the
attention of this Court to the original order of the Licensing
Authority, whereby the license of the petitioner has been
cancelled.

The order does not state any reason for coming to
the aforesaid conclusion.

Mr. Upendra Pratap Singh, the learned counsel for



the State, however, submits that the order in question has already been challenged in appeal and the appellate Court has sustained the aforesaid order.

This Court has times without number, held that if the original order suffers from the defect of being non-speaking, the same cannot be restituted in appeal as the appellate authority would not have any material before it to test the original order. The Hon'ble Supreme Court in the **Institute of Chartered Accountants of India vs L.K. Ratna & Others, 1986 (4) SCC 537**, has categorically held that even if the appellate decision cannot be faulted for being a non-reasoned order but if it is against an order by the original authority, which does not actually disclose any application of mind, such manifest original defect cannot be cured by the appellate authority.

Keeping in view the aforesaid view and the decision of this Court in the case of **Pinki Kumari @ Pinki Singh vs. the State of Bihar and Others (C.W.J.C. No. 21135 of 2021)**, disposed of on 02.03.2022, we find force in the submission of the counsel for the petitioner. The orders passed by the appellate authority dated 06.12.2019 as also the order passed by the Licensing Officer/S.D.O., Sadar Saharsa dated



21.06.2017, are set aside and the matter is remitted to the Licensing Authority to afford fresh notice to the petitioner within a period of 30 days from the date of receipt / production of a copy of this order. On receipt of the reply of the petitioner against such notice, a final decision shall be taken by the Licensing Authority within a further period of 60 days and the order so passed by the authority shall be backed by reasons in support of the same.

With the aforesaid direction / observation, the petition stands allowed.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

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