

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1266 of 2018

In
Civil Writ Jurisdiction Case No.6272 of 2018

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Md. Taslimuddin, Son of Abdul Rashid, R/o Village- Kathotia (Sisia), P.S.-
Barari, District- Katihar.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Department, Bihar, Patna.
2. The Collector-cum-District Magistrate, katihar.
3. The District Supply Officer, Katihar.
4. The Sub-Divisional Officer, Katihar.
5. The Block Supply Officer, Barari, District- Katihar.
6. Md. Islamuddin, Son of Abdul Mannan, R/o Village- Kathotiya, P.S. Barari, District- Katihar.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Rama Nand Poddar, Advocate
For the Respondent/s : Mr. S.Raza Ahmed, AAG-5

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 23-06-2023

1. Heard learned counsel for the appellant and learned
counsel for the respondents.

2. The instant appeal has been preferred against the
judgment dated 7.5.2018 passed in C.W.J.C. no. 6272 of 2018



by which the learned Single Judge was pleased to quash the order contained in Memo no. 135 dated 27.2.2016 issued by the Sub-Divisional Officer, Katihar whereby the PDS licence bearing Licence no.37 of 2011 of the petitioner was cancelled.

3. The appellant has also filed an interlocutory application (I.A no. 7002 of 2018) praying therein for condonation of delay of 19 days in preferring the appeal. Besides this, the appellant has also filed an interlocutory application (I.A. no.8462 of 2018) praying for grant of leave to file an appeal against the judgment and order dated 7.5.2018 allowing the C.W.J.C no.6272 of 2018.

Re: I.A. no. 7002 of 2018

4. The instant application has been filed by the appellant praying for condoning the delay of 19 days in filing the appeal against the order impugned dated 7.5.2018 passed by the learned Single Judge allowing the writ application.

5. Having heard learned counsel for the parties and taking into consideration the reasons assigned and the contents of the petition filed, the Court is satisfied that the appellant has made out a case for condonation of delay in filing of the instant appeal.

6. The delay is condoned.



7. I.A. no.7002 of 2018 is allowed.

Re: I.A no.8462 of 2018 and L.P.A no.1266 of 2018

8. The facts in brief as borne out from the records of the instant appeal as also from the connected records of C.W.J.C no.6272 of 2018 from which the instant appeal arises is that pursuant to recovery of bags of maize and rice from a Tata Magic vehicle and on disclosure that the seized grains belong to the writ petitioner and one another, an F.I.R being Barari P.S. Case no.53 of 2016 was registered on 23.2.2016 under section 7 of the Essential Commodities Act, 1955. The writ petitioner was taken into custody and was later released on bail.

9. It further transpires from the contents of the F.I.R that the grains appeared to have been provided by the government for distribution and they were identified by the appellant and two others as belonging to the writ petitioner.

10. By order contained in Memo no.135 dated 27.2.2016 (Annexure-2 to writ application) issued under the signature of the Sub-Divisional Officer, Katihar, on account of registration of the F.I.R, the PDS Licence no.37 of 2011 of the writ petitioner was cancelled with immediate effect. It is against this order of cancellation that the writ petitioner filed



C.W.J.C. no. 6272 of 2018 contending that the order impugned had been passed without issuing any show cause notice and thus was in violation of Rule 28 of the Bihar Targeted PDS (Control) Order, 2016 ('Control Order' in short). No counter affidavit having been filed on behalf of the State-respondents and the contention of non-issuance of show cause notice not having been contested, the learned Single Judge by his order dated 7.5.2018 allowed the prayer made in the writ application and quashed the impugned order of suspension dated 27.2.2016.

11. It is against this order dated 7.5.2018 of the learned Single Judge that the appellant has preferred the instant appeal.

12. In I.A. no.8462 of 2018, the appellant submits that the PDS licence of the writ petitioner was cancelled on the basis of the F.I.R. wherein the appellant is the informant and it was he who had given information to the respondent authority.

13. A copy of the F.I.R is Annexure-1 to the writ application and on perusal of the same it transpires that it is not the appellant but one Prabhanjan Kumar, a Government employee who is the informant. The appellant is one of the



three witnesses named in the F.I.R who are said to have identified the seized grains as belonging to the writ petitioner and one another.

14. In the opinion of this Court, the appellant was not a necessary party who needed to be made a party to the writ application nor has he any occasion to file the instant appeal against the order allowing the writ application.

15. Even on merits, Rule 28 of the Control Order talks about suspension of licence by the licensing authority on account of an F.I.R having been registered under the Essential Commodities Act, 1955 and the licensee having been sent to jail. The said Rule further provides that after serving show cause notice and giving the licensee sufficient opportunity to present his case, a lawful action shall be taken against him. The case of the petitioner in the writ application was that no show cause notice was served on him. While no counter affidavit was filed on behalf of the respondents in the writ application, in the instant appeal although a counter affidavit has been filed on behalf of the State-respondents, however the contention of the writ petitioner of no show cause notice having been served on him has not been denied therein. The writ petitioner was also not detained in prison, since he was



released on anticipatory bail obtained.

16. In view of the above this Court finds no merit in the case of the appellants on merits also.

17. Both I.A. no.8462 of 2018 as also the Letters Patent Appeal are dismissed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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AFR/NAFR	
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