

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2325 of 2023

Sunil Kumar

... .. Petitioner/s

Versus

The State of Bihar & Ors.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Madhav Raj, Adv.

For the Respondent/s : Mr. Arvind Ujjwal (Sc4)

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

7 23-08-2023 Learned counsel appearing on behalf the petitioner has stated that the authority concerned has cancelled the license standing in the name of the father of the petitioner on 21.10.2020. The father of the petitioner has filed an appeal before the Appellate Authority showing himself as the Appellant No. 1 and the petitioner as the Appellant No. 2 pending the appeal his father died.

2. Learned counsel has stated that the authority concerned during the lifetime of his father had permitted the petitioner to run the shop as a representative of his father vide Annexure -2 and, therefore, the appeal was filed showing his father as the appellant No. 1 and himself as a appellant No. 2. The Appellate Authority only on the ground that the petitioner has not substituted himself as a legal representative of his father



in the appeal has dismissed the appeal. Learned counsel has stated that the authority concerned, without adverting to the merits of the case, has dismissed the appeal solely on the above mentioned ground stating that no order can be passed against a dead person. Learned counsel has stated that the appellate authority ought to have granted the petitioner an opportunity of filing a substitution petition but the same was not done and the appeal was dismissed on technical ground. Therefore, the petitioner has prayed this Hon'ble Court to set aside the impugned order of the Appellate Authority.

3. Admittedly, in the present case, the appeal has been filed during the life time of the father of the petitioner whose license was cancelled by the Sub-Divisional Officer vide order dated 21.10.2020. The petitioner has shown himself as Appellant No. 2 and in the cause title he is shown as representative and authorized person of the Appellant No. 1. The appellate authority ought not to have dismissed the appeal on the ground that petitioner has not filed a substitution petition after the death of the Appellant No. 1. Moreover, as seen from the cause title, the petitioner was already arrayed as Appellant No. 2 in the said appeal and in case the appellate authority wanted the Legal Representatives of the Appellant No. 1 to be



brought on record he should had provided an opportunity to the petitioner to file such an application. Further, it is stated by the learned counsel for the petitioner that except the petitioner there are no other legal representative and therefore the dismissal of the appeal on the above technical ground was unwanted and cannot be countenanced. Having regard to the above, the impugned order is set aside and the appeal is remanded back to the appellate authority for passing orders afresh on merits.

4. However to avoid any technical objection, the petitioner is directed to file a substitution petition within a period of four weeks from the date of receipt of the copy of this order and on such application being made, the same shall be ordered. Thereafter and the appeal will heard and decided on merits and necessary orders passed. The entire exercise shall be completed as expeditiously as possible preferably within a period of eight weeks thereof.

5. With the above said observations, this writ petition stands disposed of.

(A. Abhishek Reddy , J)

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