

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1973 of 2024

=====

Sapta Panchayat Kirshk Seva Swablambi Sahkari Samiti Limited A co-operative Society, having its office at Village Laheriyaganj PO and P.S. Madhubani, District Madhubani, through its Secretary Pappu Kumar Paswan, aged about 35 years (male), son of Ram Bahadur Paswan, resident of Village Lalganj Samela, Ward No. 14, P.S. Kewati, District Darbhanga

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Department of Agriculture, Government of Bihar, Vikas Bhawan, Patna 800015.
2. The Principal Secretary, Department of Agriculture, Government of Bihar, Vikas Bhawan, Patna 800015.
3. The Agriculture Director, Department of Agriculture, Government of Bihar, Vikas Bhawan, Patna 800015.
4. The Joint Director, (Agriculture), Darbhanga Division, Darbhanga.
5. The District Agriculture Officer, Madhubani.
6. The District Agriculture Co-ordinator, Madhubani.
7. The District Magistrate, Madhubani.
8. The Block Agriculture Officer, Rahika, Madhubani.

... .. Respondent/s

=====

Appearance :

For the Petitioner : Mr. Suraj Samdarshi, Adv.
For the State : Md. Faiz Ahmad, AC to GP-14

=====

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

4 08-04-2024 Heard the learned counsel for the parties.

2. This writ petition has been filed for the following

relief(s):-

“i) To issue an appropriate writ, order or direction in the nature of certiorari for quashing letter no. 14 dated 05.01.2024 issued by the Respondent District Joint Director (Agriculture), Darbhanga Division,



Dharbhanga (Annexure P 14) where by an whereunder the appeal preferred by the petitioner against order contained in memo no. 194 dated 30.01.2023 issued by Respondent District Agriculture Officer, Madhubani cancelling Petitioner's fertiliser license no. CFK 20041700811 – R for wholesale business of fertilizer, has been rejected on the ground that the same has not been preferred within limitation period of 30 days.

ii) To issue an appropriate writ, order or direction in the nature of certiorari for quashing the order contained in memo no. 194 dated 30.01.2023 (Annexure P12) issued by the Respondent District Agriculture Officer, Madhubani whereby the fertiliser license No. CFK 20041700811 – R granted to the petitioner for wholesale business of fertilizer has been cancelled upon remand of the matter by this Hon'ble Court vide interim order dated 09.01.2023 passed in CWJC No. 17965/2022.

iii) To issue further appropriate writ, order or direction to the Respondent District Agriculture Officer, Madhubani, to release the entire quantum of fertilizer and wheat seized from Petitioner's godown.



iv) *This Hon'ble Court may adjudicate and hold that letter no. 14 dated 05.01.2024 issued by the Respondent Joint Director, is bad in the eyes of law as the Respondent Joint Director has failed to consider that the appeal was preferred in light of the liberty granted by this Hon'ble court contained in order dated 05.12.2023 passed in CWJC No. 17965/2022.*

v) *This Hon'ble court may further adjudicate and hold that memo no. 194 dated 30.01.2023 is an order passed in a mechanical manner without considering the provisions of the Fertilizer Control Order, 1985 and after levelling three additional allegation which could not have been done in light of interim order dated 09.01.2023 passed in CWJC No. 17965/2022.*

vi) *This Hon'ble Court may adjudicate and hold that Respondent District Agriculture Officer being a quasi-judicial authority, was under a obligation to pass a reasoned and speaking order dealing with all the contentions put forth by the petitioner.*

Vii) *This Hon'ble Court may adjudicate and hold that the cancellation of petitioner's fertilizer license is violative of proviso to Clause 31(1)(b) of the Fertiliser Control Order, 1985 as the*



petitioner has not been afforded the mandatory 30 days period to dispose of the balance stock.

Viii) This Hon'ble Court may adjudicate and hold that according to the terms and conditions of the certificate of registration (Form B of Fertilizer Control Order, 1985) the only requirement for changing the place of sale depot/godown is that the dealer has to intimate the registering authority regarding change in the premises of sale depot and/godown attached to the sale depot.

ix) This Hon'ble Court may adjudicate and hold that since wheat is an uncontrolled commodity, engaging in the trade of wheat does not violate the provisions of the Essential Commodities Act, 1955.

x) This Hon'ble Court may further adjudicate and hold that cancellation of Petitioner's fertilizer license is highly disproportionate to the allegations levelled upon the petitioner.

xi) This Hon'ble Court may further adjudicate and hold that the action of Respondent District Agriculture Officer is a completely arbitrary exercise of authority/power vested in him."

3. Learned counsel appearing on behalf of the



petitioner has stated that the petitioner has approached this Hon'ble court aggrieved by the order of cancellation dated 30.01.2023 on an earlier occasion vide C.W.J.C. No. 17965 of 2022. That this Hon'ble Court on 05.12.2023 permitted the petitioner to withdraw the above C.W.J.C. with a liberty to file a statutory appeal before the authority concerned. Thereafter, the petitioner has preferred an appeal before the authority concerned but the authority vide order dated 05.01.2024 has dismissed the appeal on the ground that the same is filed beyond the period of limitation of 30 days. Learned counsel has stated that the impugned order dismissing the appeal on the ground of delay is contrary to the direction given by this Hon'ble Court in C.W.J.C. No. 17965 of 2022 where the Hon'ble Court has permitted the petitioner to file his appeal.

4. Per contra, the learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the present writ petition and stated that the petitioner has not filed any condone delay petition before the authority concerned for considering the same. That the statutory limitation period of 30 days is provided under the Act for filing appeal and the order of cancellation is dated 30.01.2023 whereas the appeal has been filed by the petitioner on



18.12.2023 i.e. after a period of eleven months without any condone delay application. The authority left with no other option had to dismiss the appeal as the same is filed beyond the period of limitation of 30 days as provided under the Act. Learned counsel has, therefore, prayed this Hon'ble Court to dismiss the present writ petition.

5. A perusal of the order dated 05.12.2023 passed by this Court in C.W.J.C. No. 17965 of 2022, more specifically para 3 and 4 reads as under:-

“3. Learned counsel appearing on behalf of the petitioner has stated that pursuant to the order dated 09.01.2023 the authorities have passed fresh order of cancellation on 30.01.2023 in Memo No. 194. Learned counsel has stated that the petitioner may be permitted to withdraw the present writ petition with a liberty to file an appeal against the said order of cancellation dated 30.01.2023.

4. Having regard to the same, the present writ petition is disposed off granting liberty to the petitioner to file an appeal against the order of cancellation dated 30.01.2023.”

6. This Court while granting liberty to the petitioner to withdraw the writ petition has granted permission to file an appeal. The writ petition was withdrawn on 05.12.2023 and the



petitioner filed the appeal on 18.12.2023. It is not a case where even after granting the permission to file appeal, the petitioner has filed the appeal with considerable delay but filed the appeal within two weeks from the date of withdrawal. Once a permission has been granted by this Court to file an appeal, it is deemed that delay in filing the appeal is condoned, therefore, the question of limitation does not arise.

8. Having regard to the above fact, the impugned order passed by the authority is set aside. The authorities are directed to number the appeal and hear the appeal on merits and pass necessary orders on merits. If any I.A is filed by the petitioner seeking any interim relief, the same shall be considered on its own merits and order passed as directed by this Court vide order dated 05.12.2023 in C.W.J.C. No. 17965 of 2022.

9. With the above directions, the present writ petition stands disposed of.

(A. Abhishek Reddy , J)

Gauravkr/-

U			
---	--	--	--

