

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7544 of 2023

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Ramdeo Sada @ Ramdev Sada S/o Late Fagu Sada, Resident of village- Agar,
Kharra, Ward No.8, Gram Panchayat- Kathdumar, P.S.-Simri Bakhtiyarpur,
District- Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary, Food and Consumer Protection
Department, Govt. of Bihar, Old Secretariat, Patna.
2. The SDO, Simri Bakhtiyarpur, Saharsa.
3. Block Supply Officer, Simri Bakhtiyarpur, Saharsa.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. N.K. Agrawal, Sr. Adv.
	:	Mr. Vijay Anand, Adv.
	:	Mr. Roop Kishan, Adv.
	:	Mr. Kumar Rajdeep, Adv.
For the Respondent/s	:	Mr. Anisul Haque, AC to AAG5

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

6 09-01-2024 Heard the learned counsel for the parties.

The present writ petition has been filed for the
following relief(s):-

*“That the present writ
application is being filed in the nature of
certiorari for setting aside the order dated
16.3.2023 passed Learned SDO Simri
Bakhtiyarpur fully contained in Memo No.
297 whereby and whereunder the SDO was
please to reject the application of the
petitioner for restoration of license in terms
of order dated 16.1.2023 and further be
please to retaining his earlier order of
cancellation of license dated 5.2.2017.”*

3. Learned counsel for the petitioner has stated that on
earlier occasion this Court vide order dated 16.1.2023 in CWJC
No. 4729 of 2020 has set aside the order passed by the Appellate
as well as Licensing Authority and remanded the matter back to



the Licensing Authority for passing order afresh duly giving the reasons in support of the decision taken by the said authority. Learned counsel has stated that after the matter was remanded back to the authority, the Licensing Authority vide order dated 16.03.2023 (Annexure-8) has passed the impugned order. Learned counsel has stated that instead of complying with the directions given by the Hon'ble Division Bench of this Court to pass reasoned order afresh, the authority concerned has reiterated the facts and simply stated that the order which has already been set aside by this Hon'ble Court i.e. order dated 5.10.2017 in Memo No. 1394-2 is revived. Learned counsel has stated that once an order has been set aside, the same cannot be revived by the Licensing Authority. That the authority was obligated to pass a reasoned order but instead of complying with the said direction, the impugned order is passed and the same is contrary to the principles of natural justice and also direction given by this Hon'ble Court.

4. *Per Contra*, learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the present writ petition and stated that the present writ petition is not maintainable as the petitioner has an alternative and efficacious remedy of filing an appeal before the



Appellate Authority. Learned counsel has stated that the Licensing Authority has passed a reasoned order and in case the petitioner is aggrieved by the same, his remedy is to file an appeal before the Appellate Authority but without availing the statutory appeal, the petitioner has straightaway approached this Hon'ble Court by way of the present writ petition. Learned counsel has therefore, prayed this Hon'ble Court to dismiss the present writ petition.

5. A perusal of the order passed by Division Bench of this Hon'ble Court in CWJC No. 4729 of 2020 vide dated 16.01.2023 reads as under;

“No doubt, the order passed in appeal does prescribe reasons for upholding the order passed by the Licensing Authority but as we have already held in several orders that an appellate order cannot reconstitute the original order so far as reasons are concerned, we are not persuaded to sustain either the original or the appellate order.

Both the orders are, therefore, set aside.

The matter is remitted to the Licensing Authority, who after adverting to the reply filed by the petitioner, shall pass a fresh order in accordance with law, within a period of 60 days from the date of receipt/production of a copy of this order.

The order so passed by the Licensing Authority shall contain reasons in support of the decision taken by him and shall be made available to the petitioner forthwith.”

6. After the remand, the Licensing Authority while passing the orders afresh has simply reiterated the facts and held that the order which has already been set aside by this Hon'ble



Court i.e. order dated 05.10.2017 in Memo No. 1394-2 post good and cancelled the license of the petitioner. With due respect to the counsel appearing on behalf of the respondents, the said order passed by the Licensing Authority is not sustainable either on facts or in law as the same is not only contrary to the orders of this Hon'ble Court but also principles of law. Once an order has been set aside by the Division Bench of this Hon'ble Court and the matter remanded back to the authority for passing order afresh, the said authority cannot reiterate the earlier order which has already been set aside.

7. Having regard to the same, the impugned order is set aside and the matter remanded back to the authority concerned for passing orders afresh. It is needless to mention that before passing any order, the authority shall put the petitioner on notice and give him an opportunity of hearing. The authority concerned shall pass a reasoned order setting out the reasons in support of the order.

8. With the above direction, the present writ petition stands disposed off.

(A. Abhishek Reddy, J)

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