

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10439 of 2024

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Parmeshwar Kumar Tripathi @ Parmeshwar Tiwari S/O Late Murlidhar Tiwari Resident of village- Bishunpur Horil, P.S.- Baruraj, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
2. The Collector, Muzaffarpur.
3. The District Supply Officer, Muzaffarpur.
4. The Sub-Divisional Officer, West, District- Muzaffarpur.
5. The Block Supply Officer, Motipur, District- Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dhananjaya Nath Tiwari, Adv.
For the Respondent/s	:	Mr. Government Advocate 10
For the State	:	Mr. Manoj Kumar Yadav, AC to GA-10

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

2 03-12-2024 The present writ petition is filed challenging the order dated 25.01.2024 (Annexure- P/7). Learned counsel for the petitioner has stated that the P.D.S. license of the petitioner's father was cancelled vide Memo No. 38 dated 11.01.2022 (Annexure- P/3) and during his lifetime, the father challenged the same by way of appeal. However, pending the adjudication of the appeal, the father of the petitioner died and thereafter the petitioner has filed a substitution petition seeking to bring himself as a legal representative of the deceased father. However, the authority in a pedantic and mechanical manner has dismissed the appeal, holding that there is no provision for



substitution. Learned counsel for the petitioner has stated that unless and until the cancellation order is set aside, the petitioner cannot file any application seeking appointment on the compassionate grounds. Learned counsel has further stated that the order is passed against a dead person and is non-est in the eye of law. Learned counsel has, therefore, prayed this Hon'ble Court to allow the present writ petition and set aside the order of the Collector as well as that of the Sub Divisional Officer.

2. Per contra, the learned counsel appearing on behalf of the respondent State has vehemently opposed the very maintainability of the present writ petition. Learned counsel has stated that there is no provision under the control order, 2016 for bringing the legal representatives on record and therefore, prayed this Hon'ble Court to dismiss the present writ petition.

3. A perusal of the documents, more particularly, the impugned order passed by the appellate authority reveals that the order is passed against a dead person. The authority has rejected the application made by the petitioner for substituting himself as a legal heir solely on the ground that there is no provision under the Control order, 2016 for substituting the legal representative of the appeal. The said view is not legally tenable irrespective of the fact as to whether there is any provision in



the Act or not whenever a party to the proceedings dies and if there is any rights subsisting the legal heirs of that deceased person will have every right to contest the same. In this particular case, as pointed out by the learned counsel, the petitioner is having a subsisting right. Unless and until the order of cancellation is set aside, his right to file an application seeking appointment under the compassionate ground cannot be considered. The authority was not right in dismissing the substitution petition solely on the ground that there is no provision under the act. Further, it is to be noted that this Court as well as the Hon'ble Supreme Court is in a catena of cases has time and again held that orders passed against the dead person are non- est in the eye of law. Therefore, the order impugned in the present writ petition is liable to be set aside on this ground alone.

4. Accordingly, the order dated 25.01.2024 passed by the appellate authority is set aside. The matter is remanded back to the appellate authority for considering the case afresh. The appellate authority shall bring on record the petitioner as one of the legal heirs of the appellant therein and proceed with the matter. The appellate authority shall pass final orders in the appeal. The entire exercise shall be completed as expeditiously



as possibly preferably within a period of eight weeks from the date of receipt of the copy of this order. The petitioner shall be given an opportunity of hearing. Any order passed shall be communicated to the party.

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

(A. Abhishek Reddy , J)

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