

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21051 of 2013

In
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Tannu Bharti

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dharendra Nath Jha

For the Respondent/s : Mr. Anjani Kr Sharan

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA
PRATAP SINGH
ORAL ORDER

3 01-10-2015

Heard learned counsel for the petitioner and the

State.

The petitioner seeks quashing of the memo No. 631 dated 11.08.2012 ,whereby the District Selection Committee rejected his application, which has been communicated by the S.D.O.-cum- licensing authority Kharagpur vide memo no. 264 dated 15.09.2012. The petitioner is daughter of late Binay Kumar who had a license for fair price shop bearing old License No. 12/93 and the new license No. 13 of 2007. The aforesaid Binay Kumar died in a road accident giving rise to Kharagpur P.S. Case No. 15 of 2010.

Late Binay Kumar died leaving behind his widow, parent, minor son and the petitioner. On death of her father she applied for license of PDS shop on compassionate



ground under clause 2.5 of the P.DS order 2007. Her application for grant of license was rejected by the District Selection Committee presided by the District Magistrate. The resolution is annexure-E to the counter affidavit. The decision of the District Selection Committee was communicated to the office of S.D.O. Kharagpur, vide memo no. 631, dated 11.8.2012. The Licensing authority in turn communicated the decision to the petitioner, vide its memo no.264 dated 15.09.2012 which is under challenge in this writ application.

It appears from the memo No. 264 dated 15.09.2012 of licensing authority, that the application of the petitioner was rejected on the sole ground that her mother is a Panchayat Teacher. The issue is whether PDS license on compassionate ground can be denied solely on the ground that applicant's mother is employed as a Panchayat Teacher or Government teacher. Clause 2.5 of PDS (Control order 2007) which deals with compassionate appointments is quoted herein below:-

“2.5 Compassionate Cases:- On priority basis wife/husband, son, unmarried daughter, daughter-in-law, widow of deceased son would be allotted shops. Affidavit for no objection shall be obtained

from rest of dependents mentioned above. The application shall be accepted from the dependent within the two years from the date of death of the licensee

In case of demise of licensee within, fifty five of their age then only license on compassionate ground shall be admissible to their dependent.”

Clause 2.6 states that shop shall not be allotted to the following people:-

(a) Shops shall not be allotted to more than one member of a joint family. Following members shall be considered under the definition of family; Mother, Father, Brother, Sister-in-law, wife, son, Daughter-in-law, Step Brother. It shall come into force on the date of its notification.

(b) Elected Mukhiya, Sarpanch, Ward Member, Panchayat Samiti member. Zila Parishad Member, M.L.A, M.P., Member of Municipal Corporation and Municipality till their tenure.

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(d) Minor, Lunatic or is of unsound mind and un-discharged insolvent.

(e) Applicant shall not be given license if he/she is finally convicted under Essential Commodities Act, 1955 (Central Act 10 of 1955).

(f) If applicant holds the post of profit
in the Government.

Thus compassionate appointment under clause 2.5 of 2007 order could have been denied if one falls under any of the categories mentioned in clause 2.6. It is not the case of the respondent that the case of the petitioner falls in any of the categories. Sub clause(a) of clause 2.6 prohibits grant of license to more than one member of a joint family. The family is defined in clause 2.6. It is not the case of the respondent that any other member of her joint family has a license under the PDS system.

Besides this none of the embargoes mentioned in clause 2.6 is applicable in petitioner's case. Apart from clause 2.6 there is no provision which disentitles a person to grant of license only on the ground that her mother is a Panchayat Teacher or a Govt. employee.

In absence of any provision to the contrary, the decision of the Selection Committee refusing petitioner's case for grant of license on the ground that her mother is a Panchayat Teacher is not tenable in law. Accordingly the impugned decision of the Selection Committee and the Licensing Authority so far as the petitioner is concerned, are set aside. The respondents, particularly the District Magistrate, who is Chairman of the

District Level Selection Committee, is directed to consider the case of the petitioner afresh for grant of license in the light of clause 2.5.

This application is allowed.

(Samarendra Pratap Singh, J)

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