

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3228 of 2015

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Sanju Kumari W/o Jairam Prasad Resident of Village Mahwatipur, P.O. Mahavalipur, P.S. Paliganj, District Patna

.... Petitioner

Versus

1. The State of Bihar through its Principal Secretary, Food & Supply Department, Government of Bihar, Patna.
2. The District Magistrate-cum-Collector, Patna.
3. The Additional District Magistrate, Patna.
4. The Sub Divisional Officer, Paliganj, Patna.
5. Block Supply Officer, Paliganj Block, District Patna

.... Respondents

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Appearance :

For the Petitioner : Mr. Rajendra Sharma, Advocate

For the State : Mr. SUNIL KR. MANDAL, SC 24

Mr. Arjun Prasad, AC to SC 24

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 17-03-2016

Heard the parties.

Grievance of the petitioner is that though admittedly a recommendation was made by the Sub Divisional Officer, Paliganj in favour of the petitioner vide Annexure 1 dated 7.1.2008 for grant of licence for running a shop under the Public Distribution System (hereinafter referred to as “PDS”), however, thereafter, no action was taken as the petitioner was made to wait, whereas, with respect to some other Panchayat, the recommendation which was made on 07.11.2008 was considered and licence was granted.

On this contention of the petitioner, this Court directed the District Magistrate, Patna to examine the matter and file an affidavit as to why no decision either this way or that way was taken by the

competent authority in the matter of the petitioner whereas for others considerations were made.

A counter affidavit has been filed on behalf of the District Magistrate stating that the matter was pending and in the meantime, on 23.06.2011 an amendment was brought in the Public Distribution System(Control) Order, 2001(hereinafter to be referred to as “the Control Order”) under which the licence could not have been granted to the individual, therefore, the recommendation stood rejected automatically.

The aforesaid statements made on behalf of the District Magistrate, Patna, in particular, in paragraphs 9 and 10, are noted only to be rejected inasmuch as, though he states in paragraph 10 of the counter affidavit that the amendment was made by the competent authority in the Control Order under which a licence could not have been granted to the individual, but it is not stated as to why on the recommendation made in the year 2008 itself till 23.06.2011 no decision was taken by the authority concerned for about three years, whereas, admittedly, in other cases were considered. This shows casual, negligent and callous approach of the authorities as if, after the recommendation, they had gone to sleep. Secondly, the contention that once an amendment was made on 23.06.2011 debarring granting of licence to the individual, the recommendation



of the Sub Divisional Officer dated 10.11.2008 in favour of the petitioner stood rejected automatically is also not tenable inasmuch as whether the implication of such amendment was from retrospective effect or not or whether that would apply in pending cases or not, was to be considered by taking a decision as even after the amendment, the person aggrieved would have a right to assail the same before a competent forum. Unless such decision is taken one would obviously assume that his/her matter is still pending before the authority concerned and there would be no occasion to approach for the same before the appropriate superior forum. Thus, the contention of learned counsel for the State that the petitioner was also a sleeping person is also not tenable as the authority itself was sleeping over the matter for no fault on part of the petitioner. I wonder as to how such stand would be taken by the State when the State itself even today in the counter affidavit filed by the District Magistrate could not meet out the query of this Court as to why no action was taken in the matter of the petitioner for about three years before the aforesaid amendment came into existence.

That apart, admittedly, the aforesaid amendment has been found to be arbitrary, discriminatory and violative of Articles 14 and 19(1)(g) of the Constitution by a Division Bench of this Court in its decision dated 20.12.2013 rendered in C.W.J.C. No. 15157 of 2011

and other analogous cases, a copy of which has been brought on record by the State itself as Annexure B in one of its counter affidavits. That would mean that such amendment was *ultra vires* to the Constitutional provisions right from its inception and not from the date of the aforesaid decision declaring the amendment as *ultra vires*, therefore, such ground is also not available to the respondents.

As per paragraph 9 of the counter affidavit, one shop of PDS is still vacant, therefore, in my view, there was no occasion for not considering the case of the petitioner even after declaration of that amending provision to be *ultra vires* to the Constitutional provisions and it is surprising that no decision was taken by the authorities concerned and, at the same time, they are defending their inaction.

Accordingly, this writ application succeeds and the competent authority/licensing authority/District Selection Committee, is directed to consider the case of the petitioner for grant of licence for PDS dealership in view of the recommendation made on 10.11.2008 by the licensing authority as contained in Annexure 1 against the existing vacant seat within a period of two months from the date of receipt/production of a copy of this order.

(Dr. Ravi Ranjan, J)

SC/-

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