

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1424 of 2015

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Maresh Kumar Gupta, son of Late Anup Lal Sah, Resident of village, P.O and P.S.
- Riga, District- Sitamarhi.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection Department, Old Secretariat , Patna.
2. The District Magistrate-cum-Chairman, District Selection Committee, Sitamarhi, District- Sitamarhi.
3. The Sub-Divisional Officer, Sitamarhi Sadar, District- Sitamarhi.

.... Respondents

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Appearance :

For the Petitioner : Mr. Rajeev Kumar Labh, Advocate
For the State : Mr. Prashant Kumar, A.C. to G.P. 8

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 12-01-2016

Heard learned counsel for the petitioner and the State.

Grievance of the petitioner that though the Licensing Authority has recommended for grant of licence to the petitioner on compassionate ground in terms of Clause 2.5 of Public Distribution System (Control) Order, 2001 (hereinafter referred to as ‘the Control Order 2001’) but the District Selection Committee has rejected his claim vide Annexure 1 on the ground that his brother is in Government service.

Sole ground raised by the petitioner at the time of hearing is that employment of brother in a Government service does not create a bar for grant of licence under the Control Order 2001.

Learned counsel draws attention of this Court towards Clause 2.5 and 2.6 of the Control Order 2001 to show that such ground is not available for rejection.

A counter affidavit has been filed on behalf of the respondent no.2. Learned counsel for the State points out that Sub Clause F of Clause 2.6 indicates that shop should not be allotted if any member of the family is employed in a Government. The aforesaid clause is reproduced as under for better appreciation:-

“2.6 Shops shall not be allotted to 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 Mukhia, Sarpanch, Ward Member, Panchayat Samiti member, Zila Parishad Member, M.L.A, M.P., Member of Municipal Corporation and Municipality till their tenure.

(c) Flour Mill owner.

(d) Minor, Lunatic or is of unsound mind and undischarged insolvent.

(e) Applicant shall not be given licence 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.”

(emphasis is mine)

From bare perusal of the aforesaid provision, it appears that the mandate is that the shop should not be allotted to the applicant if he holds a post of profit income from the Government. In the present case, admittedly, not the petitioner but the brother of the

petitioner is holding the post of profit in Government, therefore, in my view this clause is not at all attracted in the case of the petitioner. Similar view has been taken by the Single Bench of this Court in C.W.J.C. No.98 of 2013 disposed of on 07.01.2013 (Annexure 5) holding that the control order does not reflect that the brother of the petitioner being in Government service would create any bar for consideration of the candidature of the petitioner. It has been further held that even otherwise also a PDS licence is not akin to appointment in Government service but has an element of a fundamental right to vocation under Article 19 of the Constitution of India.

As a result, this writ petition succeeds and Annexure 1 so far it concerns the petitioner, is quashed and set aside and the matter is remitted back to the District Selection Committee for consideration of the petitioner for grant of licence on compensate ground by passing an appropriate order within a period of two months from the date of receipt/production of a copy of this order.

(Dr. Ravi Ranjan, J)

Spd/ Sanjay-II/-

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