

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10989 of 2017

Fair Price Dealers Association, Wheelerganj, Lehariasarai, Maa Durga Niwas Darbhanga P.S.-Lehariasarai District-Darbhangha through its General Secretary, Rajeev Kumar Chaudhary Son of Ram Pratap Chaudhary Resident of Maa Durga Niwas, Mohalla-Wheelerganj Near M.K.P. Vidyapati School, Balbhadrapur, P.S.-Lehariasarai District-Darbhangha

..... Petitioner

Versus

- 1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.
- 2. The Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Old Secretariat, Patna.
- 3. The District Magistrate, Darbhanga
- 4. The District Supply Officer, Darbhanga
- 5. The Sub Divisional Officer, Sadar, Darbhanga
- 6. The Sub-Divisional Officer, Biraul, Darbhanga
- 7. The Sub Divisional Officer, Benipur, Darbhanga
- 8. The District Co-Operative Officer, Darbhanga

..... Respondents

with

Civil Writ Jurisdiction Case No. 16514 of 2017

Fair Price Dealers Association through its President, Amarendra Rai Son of Late Chandradeo Rai, resident of Village - Kurshandi, Block - Puraini, District - Madhepura.

..... Petitioner

Versus

- 1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.
- 2. The Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Old Secretariat, Patna.
- 3. The District Magistrate, Madhepura.
- 4. The Sub-Divisional Officer, Madhepura.
- 5. The Sub-Divisional Officer, Udakishunganj, Madhepura.
- 6. The District Supply Officer, Madhepura.
- 7. The District Co-operative Officer, Madhepura.

..... Respondents

with



Civil Writ Jurisdiction Case No. 16566 of 2017

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Fair Price Dealers Association, Kharagpur, Munger through its Secretary,
Shankar Prasad @ Shankar Prasad Sah, son of Late Ram Lakhan Sah, Resident
of West Azimganj, P.S.- Kharagpur, District- Munger.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Old Secretariat, Patna.
3. The District Magistrate, Munger.
4. The District Supply Officer, Munger.
5. The Sub Divisional Officer, Haveli Kharagpur, Munger.

.... Respondents

with

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Civil Writ Jurisdiction Case No. 2862 of 2018

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Fair Price Dealer Association Manihari Block, District- Katihar through its
General Secretary Gopal Paswan, Son of Late Ramdhan Paswan, Resident of
Village- Bhora Tola, P.S. Manihari, District- Katihar.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Old Secretariat, Patna.
3. The District Magistrate, Katihar.
4. The District Supply Officer, Katihar.
5. The Sub Divisional Officer, Manihari, Katihar.
6. The District Co-operative Officer, Katihar.

.... Respondents

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Appearance:

(In CWJC No.10989 of 2017)

For the Petitioner : Ms. Sushmita Mishra, Advocate

For the Respondents : Mr. Arvind Ujjwal-SC4

For the Int. Resp. in IA No. 7739/2017: Mr. Rajendra Narain, Sr. Adv

Mr. Ashok Kumar Prasad, Adv

Mr. Umesh Kumar Roy, Adv

Mr. Satyeshwar Prasad, Adv

For the Int. Resp. in IA No. 7631/2017: Mr. Sanjeev Kumar Jha, Adv



(In CWJC No.16514 of 2017)

For the Petitioner : Mr. Sanjeev Kumar Mishra, Advocate
For the Respondents : Mr. Arbind Ujjawal - SC4

(In CWJC No.16566 of 2017)

For the Petitioner : Ms. Sushmita Mishra, Advocate
For the Respondents : Mr. ARVIND UJJWAL SC4

(In CWJC No.2862 of 2018)

For the Petitioner : Mr. Bimal Kumar, Advocate
For the Respondents : Mr. S.Raza Ahmad -AAG5

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 03-04-2018

Heard learned counsel for the petitioners and learned counsel for the respondents.

2. These writ petitions involve common issues, seeking to challenge the basis for selection against vacancies of Public Distribution System Licensed Shops as being contrary to Clause 6(iv) of the Bihar Targeted Public Distribution System (Control) Order, 2016 ('BTPDS Order' for short) providing for reservation in allotment of Fair Price Shops. These writ petitions are accordingly taken up together for disposal at the stage of admission itself with the consent of parties.

3. At the very outset, serious objection against the maintainability of the writ petitions has been raised by the interveners, Niranjana Kumar Paswan and 48 others (whose I.A. No. 7690 of 2017 filed in CWJC No. 10989/2017 has been allowed on 03.11.2017 for their impleadment as party respondents), who are the persons who have been selected and are awaiting issuance of licences in their favour,



inter alia, on the following grounds —

- (i) That these writ petitions have been filed on behalf of an Association, claiming to be a registered trade union, through one Rajeev Kumar Choudhary who claims to be its General Secretary.
- (ii) That the claim that the Association is a registered trade union, is based on a certificate of registration No. 2525 dated 06.08.1981 issued by the Registrar, Trade Unions, Bihar. However, continuance of its registration was subject to the furnishing of requisite details by the 10th of January every year, failing which the Association would be deemed to be no longer functional, as per stipulation contained in letter dated 19.08.1981 (Annexure-1 to the rejoinder to the counter affidavit in I.A. No. 7690 of 2017). Except a bald assertion that the Association has been filing its returns, there is nothing, neither copies of the returns nor any other material, that has been brought on record in support of such claim.
- (iii) That the Association's claim that it is still functioning on the plea that membership fees are being received from its members in respect of which illustrative payment receipts issued to some persons have been annexed, is



not reliable as none of such persons finds place in the list of 196 persons said to be the members of the Association (Annexure-4 series).

- (iv) That conflicting statements have been made in the writ petitions with regard to the address of the petitioner-Association (for short 'the Association'). The registration certificate no. 2525 dated 06.08.1981 has been granted in respect of the Fair Price Dealers' Association at Patna, but the addresses in the writ petitions have variously been described at Laheriasarai (Darbhanga), Madhepura, Munger and Katihar.
- (v) That out of 196 persons said to be the members of the Association, only 3 persons have been named in para 7 of the writ petition in CWJC No. 10989/2017 as persons whose PDS shops which have been included in the list of vacancies, . However, none of these persons is shown to have authorised the Association to file a writ petition of the present nature.
- (vi) That the issue raised constitutes an individual cause of action and cannot be adjudicated in the present petitions filed at the instance of an Association. The affected persons ought to have approached this Court in their



individual capacity. Except in CWJC No. 10989 of 2017, no statement has been made with respect to which of the members have been affected and whose PDS shops have been shown against the vacancies. As such, no cause of action has been made out. It is therefore submitted that the present writ petitions are more in the nature of public interest litigations and cannot be maintained.

(vii) That a writ petition of the present nature is not authorised by any of the Association's objects (Annexure-2).

(viii) That the petition is motivated by vested interests as the wife of Sri Rajeev Kumar Choudhary aforesaid, Smt. Renu Devi, is a PDS dealer and she has not chosen to approach this Court.

4. Reliance is placed by learned counsel for the intervenors on the decisions reported in Radha Shyam Datta and others v. Patna Municipal Corporation, Patna, AIR 1956 Patna 182, and Calcutta Gas Company (Proprietary) Ltd. v. State of West Bengal and others, AIR 1962 Supreme Court 1044.

5. Learned counsel for the petitioner, on the other hand, vehemently submits that the writ petitions are maintainable as the Fair Price Dealers Association, Patna is a trade union duly registered



vide Registration No. 2525 of 1981 with its head office at Bhikhna Pahari, Patna and the present writ petitioners are branch offices of the said Association.

6. It is submitted that pursuant to Rule 14(ga) of the Rules and Bye-laws of the Association, Sri Rajeev Kumar Choudhary was authorized to file cases before this Court on behalf of the Association, District Darbhanga (Annexure-3 series) as he was nominated as a member of the National wing of the All India Fair Price Dealers Federation (Annexure-2 to the rejoinder filed by the petitioner in respect of I.A. No. 7690 of 2017).

7. Learned counsel for the petitioner has placed reliance on the following decisions —

(a) D.S. Nakara and others v. Union of India, AIR 1983 Supreme Court 130.

(b) Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association etc. v. Union of India and others, AIR 1981 Supreme Court 298.

(c) All India State Bank of Bikaner and Jaipur Officers Association v. State Bank of Bikaner and Jaipur, 1991 (2) WLN 513.



(d) Indian Banks' Association Bombay and others v. M/s Devkala Consultancy Service and others, AIR 2004 Supreme Court 2615.

8. Having heard the parties on the question of maintainability of the writ petitions, this Court is inclined to accept the submissions made on behalf of the intervener respondents. It may be noted that there are conflicting and contrary statements with regard to the status of the writ petitioners in the different writ petitions. The Fair Price Dealers Federation which nominated Sri Rajeev Kumar Choudhary as a member of its National wing, appears to be a completely different entity bearing Registration No. 4081 of 2009 (Patna), from Fair Price Dealers Association, Patna (Registration No. 2525 of 1981) as evident from perusal of its letter dated 07.05.2017 (Annexure-2 to the rejoinder in I.A. No. 7690 of 2017). The nature of relationship between such Federation and the Fair Price Dealers Association registered at Patna has not been stated. Moreover, letters of authorization in favour of the other persons who have sworn affidavits in the concerned writ petitions have also not been brought on record. It has been claimed by the petitioners that they are branches of the Association registered at Bhikna Pahari, Patna. However, it has also not satisfactorily been shown that each branch of the Association was competent to independently maintain writ petitions of the present nature, through its respective Office Bearer.



It has not been shown that the Branch had issued any authorization in favour of the concerned Office Bearer to file the writ petition on its behalf, assuming for the moment that each such Branch had any independent existence.

That apart, no material has also been brought on record to satisfactorily substantiate that the Association continues to remain registered as a functional Association even after 36 years of grant of its registration in 1981, inasmuch as such continuance had been made conditional upon furnishing of requisite annual information.

This Court is of the view that if a person's fair price shop has been notified as vacant for the purpose of fresh selection, it is an individual grievance to be agitated by the aggrieved person rather than by an Association of questionable status. Only three persons have been named as having been aggrieved out of as many as a total of 196 persons said to comprise the Association. Besides this, none of the objects of the Association specifically authorize filing of writ petitions of the present nature by it. Further, the affected members have not been shown to have given their authorisation to the Association to move this Court on their behalf.

9. The various decisions on which reliance has been placed by the writ petitioners do not come to their aid.

In D.S. Nakara's case (supra) the petitioner nos. 1 and 2, being



the aggrieved individuals, were retired pensioners of the Central Government while the petitioner no. 3 was admittedly a Society registered under the Societies Registration Act, 1860. There was thus no controversy with regard to its status as a registered Society, unlike in the present case wherein the question of registered status of the Association is itself in dispute. Moreover, as noticed in para 64 of the judgment referred to, the Society in question *“had received a large number of representations from old pensioners, who are individually unable to undertake the journey through labyrinths of legal judicial process, costly and protected, and, therefore approached petitioner no. 3 which espoused their cause”*. No such request has been brought on record in the instant case. In any event, the question of maintainability on behalf of such a Society was left open in the case referred to and the matter appears to have been decided on the basis of the claims of the individual petitioner nos. 1 and 2.

Similarly, the case of All India State Bank of Bikaner & Jaipur Officers' Association (supra) was decided by the Hon'ble Rajasthan High Court in the backdrop of the admitted fact that the Association was a registered trade union. It was observed that *“there is no prohibition for an Association to bring a writ petition on behalf of the Association espousing the common cause of the members of the Association.”* In the present case, however, the Association has not demonstrated that the issue raised was the common cause of a



significant number of its members and hence it cannot be said that it was the common cause of the members of the Association.

In para 63 of the judgment in Akhil Bharatiya Soshit Karamchhari Sangh (Railway) (supra), the Hon'ble Supreme Court held that the *"concept of 'cause of action' and 'person aggrieved' and individual litigation is becoming obsolescent in some jurisdictions and the non-recognized Association was permitted to maintain the writ petitions."* However, the context in which the judgment was delivered cannot be lost sight of. This observation was made in the backdrop of a large body of persons being aggrieved. It was observed that *"whether the petitioners belong to a recognized union or not, the fact remains that a large body of persons with a common grievance exists and they have approached this Court under Article 32..."* In the instant case, the writ petitioners have not brought any material on record to indicate that a large number of persons were affected by or had a common grievance against the impugned action.

The reliance placed on Indian Banks' Association's case (supra) is rather misconceived as evident from the observations in para 35 of the judgment wherein it has been observed that *"in an appropriate case, where the petitioner might have moved a Court in his private interest and for redressal of the personal grievance, the Court in furtherance of public interest may treat it a necessity to enquire into the state of affairs of the subject of litigation in the interest of justice."*



Thus, a private interest case can also be treated as a public interest case.” In the present set of writ petitions, no individual aggrieved person has come forward in his individual capacity nor has any plea been raised that the matter be taken up as a public interest litigation. On the contrary, a negligible number of members of the Association are said to have been adversely affected.

10. On the other hand, the decision of the Division Bench of this Court in Radha Shyam Datta’s case (supra) relied upon by the intervener respondents is rather apposite. In para 7 and 8 of the judgment, it was observed as follows __

“(7) Tested in another light the weakness in the argument of Mr. Ghose will be further exposed. If Mr. Ghose’s argument is right that the President or the Secretary of the Rate-payers Association has right to file an application on behalf of all the members of the Association, then, in case such an application is disallowed, all the members of the Association should be bound by such an adverse decision.

In my opinion, it would bring about great hardship on those who are not party to the application. Order 1, R 8, Civil P.C., which provides for the person suing or defending on behalf of all the persons having the same interest, in the subject matter of the suit also contains several checks to the exercise of such a power. In my opinion, the opposite party cannot be restrained from realising the taxes from all the members of the Rate-



payers' Association on the application of Mr. Radha Shyam Dutta alone.

8. Realising this difficulty a supplementary affidavit sworn by one Raj Narain Singh has been filed on behalf of the applicants disclosing the parentage, occupation and the place of residence of the said 297 persons who had applied for being added as applicants to the original application. The petitioners also filed on 8.12.1955, a duly executed vakalatnama on behalf of 59 persons out of the said 297 persons.

Thus in the absence of any duly executed vakalatnama the application of remaining persons out of the total number of 297 persons must be rejected as not maintainable apart from other reasons given on the merit of the same"

In the present case, similarly, vakalatnama has been filed only by a single person in each of the writ petitions and hence the writ petitions on the strength of such vakalatnamas cannot be maintained on behalf of the Association.

11. In para 5 of the judgment in Calcutta Gas Company's case (supra), the Constitution Bench of the Hon'ble Supreme Court was considering the *locus standi* to file a petition under Article 226 of the Constitution and took the view that "*the legal right that can be enforced under Article 32 must ordinarily be the right of the petitioner himself who complains of infraction of such right and approaches the Court for relief. The personal or individual right of the*



petitioner himself, though in the case of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified.” In the instant case, none of the three persons named in para 7 of CWJC No. 10989 of 2017 has come forward to agitate his/her personal or individual right.

12. In the above view of the matter, the writ petitions stand dismissed as not maintainable.

(Vikash Jain, J)

Chandran

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	04.04.2018
Transmission Date	NA

