

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14991 of 2014

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Sudam Devi W/o Late Suresh Choudhary, R/o Sarh Manjhigawn, P.S.
Shiddalla, Dist. Nawada

.... Petitioner/s

Versus

1. The State of Bihar through District Magistrate, Nawada
2. The Commissioner, Magadh Division, Gaya.
3. The Sub-Divisional Officer, Rajauli, Nawada.
4. Ram Balak Chauhan, S/o Mangar Chauhan, R/o Village Pachamba, P.S.
Sirdalla, District Nawada.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prince Kumar Mishra
Mr. Sanket

For the State : Mr. Ajay Kumar Rastogi, A.A.G.-10
Mr. Sushil Kumar Singh, A.C. to A.A.G.-10

For the Resp. No. 4 : Mr. N.K. Agrawal, Sr. Advocate
Mr. Amresh Kumar Sinha

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

9 29-08-2018

Re. I.A. No. 6761 of 2018

The present interlocutory application has been filed for dispensing with the personal appearance of the Commissioner, Magadh Division, Gaya which had been directed by means of order dated 08.08.2018. The said application has been filed on the ground that the Commissioner, Magadh Division, Gaya has been prevented to be personally present in Court due to certain unforeseen circumstances which has been rejected.

Instead, the respondent-District Magistrate, Nawada has been authorized to represent the Commissioner, Magadh Division, Gaya, to be personally present to explain the true



situation.

In furtherance to such authorization, the District Magistrate, Nawada and the Sub-Divisional Magistrate, Rajauli, Nawada, are personally present in Court today.

In view of the reasons assigned in the interlocutory application, the personal appearance of the Commissioner, Magadh Division, Gaya, is dispensed with and the appearance of the two functionaries aforementioned are accepted.

The interlocutory application (I.A. No. 6761 of 2018) stands allowed.

Heard learned counsel for the petitioner and learned counsel appearing on behalf of the State.

The petitioner seeks to challenge the order dated 28.06.2012 passed in Revision case No. 48/2009 by the Commissioner, Magadh Division, Gaya, whereby he has annulled the order of the District Magistrate, Nawada dated 02.07.2009 in Appeal Case No. 74(M) of 2009 and has directed the cancellation of the Public Distribution Shop Licence granted in favour of the late husband of the present petitioner and has further directed that the same be allotted to the Respondent No. 4 for Gram Panchayat Sarh-Majiganwa in village Sarh in Sirdala Block, Rajauli, Sub-Division of Nawada district. The petitioner's further prayer is for



quashing the consequential orders passed in pursuance of the aforesaid order by the Sub-divisional Officer, Rajouli, Nawada contained in Memo No. 1224 dated 09.08.2014. The further prayer of the petitioner is that the respondents be issued a mandamus directing the respondents to reiterate and affirm Memo No. 1028 dated 15.10.2008 passed by the District Magistrate-cum-Collector-cum-Chairman, District Selection Committee, Nawada.

Learned counsel for the petitioner has submitted that the entire order passed by the Commissioner is based on erroneous considerations inasmuch as no reservations were available at the Panchayat level and, therefore, the learned Commissioner while passing the impugned order has seriously erred on both facts and law and such an order cannot be sustained before this Court. It has been further argued that the considerations which led to the cancellation of the orders passed against the present petitioner who is the wife of the late licensee is also erroneous.

Learned counsel for the petitioner submits that as per Rule 2.2 of the Public Distribution system Control Order, 2007, the roster of reservation could be implemented only at the Sub-divisional level and, therefore, the decision of the Commission, Magadh Division, Gaya was patently wrong and misconceived. It was contended that the learned Commissioner had come to a



finding that the Respondent No. 4 being of the E.B.C. candidate which according to the recommendation of the Sub-divisional Officer was a roster point allotted for E.B.C. candidate could alone be appointed and not the petitioner who was the Scheduled Castes candidate. Thus, the Commissioner came to the finding that the appointment of the petitioner was wrong and, therefore, the order of the Collector was upset and the petitioner was thus constrained to come to this Court for appropriate relief. Learned counsel for the petitioner further submitted that as per the advertisement roster points for reservation in Panchayats were not available and the said advertisement was for appointment of dealership in the respective blocks on the basis of the roster points as would be followed in the normal course of executive business. The roster points would be available only at the Sub-divisional level which is indicated in the advertisement/Rules.

In this context, the counter affidavit (Annexure-A) clearly indicates that the provision for reservation would be Rule 2.2 which is in the following terms:-

“आरक्षण का मानक अनुमंडल स्तर पर लागू माना जायेगा।”

Thus, if the Sub-divisional Officer made any such recommendation which was contrary to the Rules as framed by the State Government which was notified on 15.02.2017 vide Memo



No. 601, the consequence which followed would be wholly erroneous and would necessitate interference by this Court.

The second issue which was raised by the Commission and which came to be the reason for setting aside the orders passed against the present petitioner is that the brother of the late licensee, husband of the present petitioner, was working, was another factor which did not entitle him to grant the P.D.S. licence and in that view of the matter also, the order of the Collector against the principles enunciated in Rule 2.6 of the Control Orders.

In this context, learned counsel for the petitioner submits that the only Rule which was applicable is 2.6 as cited herein and that as per Rule 2.6 (Ka), the applicant should not be the holder or beneficiary of any Government official or be posted in a Government office.

It was contended by the petitioner that the reason assigned by the learned Commissioner is that the brother of the petitioner's husband was a school teacher and, therefore, he was not entitled for grant of P.D.S. licence. Learned counsel for the petitioner submits that there is no such rule creating an embargo against the petitioner's late husband as the Rule did not specify as such. In that view also the order of the learned Commissioner was



clearly against the Rules and was fit to be set aside.

Learned counsel appearing on behalf of the State has filed several affidavits and has brought on record the relevant Rules and also the advertisement which was published.

This Court had earlier directed that the entire selection process be scrutinized and it be brought on record as to what were the roster points of places and blocks which had been adopted by the authorities for coming to the decision and making ready the select list for award of P.D.S. licence with regard to the advertisement of 2008 in the present case. Finally, a supplementary affidavit has been filed today. The authorities have clearly brought on record that the Commissioner had applied his mind on the basis of the recommendation of the S.D.O., but on close scrutiny, it was found that the revision application was allowed and the order of the District Magistrate, Nalanda was set aside in favour of the Respondent No. 4 on the basis of the recommendation recorded in the records of the lower Court (Sub-divisional Officer, Rajauli) stating that the Respondent No. 4 who fell in the category E.B.C. was entitled to be appointed as the relevant roster in the concerned Panchayat was for the E.B.C. Learned counsel for the State has also pointed to paragraph No. 17 of the counter affidavit filed today stating in the following terms:-



“That, this very fact is being assertively reiterated that at the very relevant time of concerned advertisement, none of the 41(forty one) vacancies in different panchayats of Rajauli Sub-division as mentioned in para-5 was specified for any particular category as required for. So the said vacancy in Sarh-Manjhgawan Panchayat was neither specified for SC nor for EBC. The Revision application of the Respondent No. 4 has only been allowed on the ground of the recommendations as made by the Sub-Divisional Officer, Rajauli and the Marketing Officer, Sirdala specifying thereby that said vacancy is for the EBC category. The basis on which the Sub-Divisional Officer, Rajauli has recommended said vacancy in Sarh-manjhgawan Panchayat belonging to the EBC category, has not been recorded anywhere in the entire proceeding. Due to oversight, if any, the case will be re-examined on the basis of merits and the application of the relevant rules, if the Hon’ble Court permits.”

Thus, it has been clearly stated that the decision arrived at by the Commissioner was on the recommendation of the Sub-divisional Officer, Rajauli which stated that vacancies in Sarh-Manjhgawan Panchayat was belonging to the E.B.C. category though such recommendation was not available in any of the records of the concerned blocks. Thus, such recommendation has no legs to stand and is fit to be rejected by the Commissioner. The Respondents have further stated that due to oversight, if any, the case will be re-examined on the basis of the merits and on



application of the relevant rules framed with regard to an award of P.D.S. dealership.

I have also heard learned counsel appearing on behalf of Respondent No. 4. The contention of Respondent No. 4, who qualified in the E.B.C. category even after there was no recommendation at the Panchayat level as there were sufficient number of seats available for E.B.C. category for award of P.D.S. dealership in favour of the Respondent No. 4 and the same should not be upset and they may be continued to run their business as they have been continuing to do so since a considerable length of time. This contention of the respondents is contrary to the settled principles of law that once a wrong has been noticed, the said cannot be perpetuated.

Having heard learned counsel for the respective parties and upon consideration of the materials which have come before this Court and upon the settled principle of law that the guidelines alone which has been framed under the Control Orders shall guide the award of dealership. This Court is of the considered opinion that there arises no question as to how an order which was passed in contravention of the Rules can be sustained.

Accordingly, the order of the Commissioner passed in Revision Case No. 48 of 2009 dated 28.06.2012 is quashed and



set aside and the earlier order of the Collector is re-affirmed.

The authorities, however, are at liberty to examine the entire aspect of the matter and consider the case of the petitioner in accordance with law.

It goes without saying that that the consequential order pursuant to the order of the Commissioner dated 28.06.2012 passed in Revision Case No. 48 of 2009 will also stand quashed.

It is made clear that since the original petitioner died during pendency of the writ application and the petitioner Sudam Devi was substituted in his place and now that the other legal heirs have given no objection in her favour, the District Magistrate, Nawada, shall consider her case in accordance with law and pass appropriate orders preferably within a period of six weeks from the date of receipt / production of a copy of this order.

This application stands allowed.

No costs.

(Anjana Mishra, J)

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