

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 3904 of 2019

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Mirtunjay Kumar Sahni (Male) aged about 39 years Son of Baleshwar Prasad Sahni Resident of Village- Chukti, PO- Mansi, PS- Mansi, District-Khagaria.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Supply Department, Bihar, Patna.
2. The District Magistrate, Khagaria.
3. The District Development Commissioner, Khagaria.
4. The District Supply Officer, Khagaria.
5. The District Co-operative Officer, Khagaria.
6. The General Manager, District Industry Centre, Khagaria.
7. The Sub -Divisional Officer, Khagaria.
8. The Block Development Officer Mansi, District- Khagaria.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mukesh Kumar and Mr. Ram Nibash Prasad, Advocates
For the State	:	Mr. U. P. Singh, A.C. to S.C. 4

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 27-05-2019

Heard learned counsel for the petitioner and learned AC
to SC-4 of the State.

2. The petitioner has moved the Court for the following
reliefs:

*“I. To issue an order /orders /direction
/directions/writ/writs in the nature of certiorari to set
aside the decision taken by the Respondents
concerned, cancelling the merit list dated 18.12.2018
with regard to selection of the petitioner in order to
carry on the business of the Fair Price Shop in the*



Panchayat of Pachhimi Thatha under Mansi Block of Khagaria Sub-Division.

II. To issue an order/ orders/ direction/ directions/ writ/ writs in the nature of mandamus commanding upon the Respondents concerned to re-allot the Public Distribution Shop, though the petitioner was already allotted the said Fair Price Shop, the same selection has been cancelled on frivolous complaint preferred by one of the applicant at serial no.3 in the merit list of EBC (H) is Economically Backward Class, Handicapped category.

III. To hold and declare that the complaint preferred by the applicant of serial no.3 in the merit list of EBC (H) quota, is frivolous and bad in law and the same should be depreciated in strong words by this Hon'ble court.

IV. To grant any other relief/reliefs for which the petitioners are entitled to."

3. The grievance of the petitioner is that he was an applicant for grant of licence under the Public Distribution System under *Pachhimi Thatha* Panchayat of *Mansi* Block of *Khagaria* Sub Division in the district of *Khagaria* along with two other persons whose candidature has been rejected only on the ground that he was the nephew of the Mukhiya and that the certificate with regard to his handicap needed to be verified.

4. Learned counsel for the petitioner submitted that under the Bihar Targeted Public Distribution System (Control) Order, 2016 (hereinafter referred to as the 'Control Order, 2016') there is no debarment of a nephew of a Mukhiya being given such licence subject to fulfillment of other conditions. It was submitted



that Rule 11(1) of the same defines who shall not be granted a Fair Price Shop licence in which such relationship of being nephew of a Mukhiya does not figure. Learned counsel further submitted that he is affected by polio and, thus, is handicapped and even if the authorities required to verify with regard to the certificate it would not give them the discretion to reject his application and go for a fresh application. It was submitted that once the petitioner fulfills the requirement under the concerned Statute/law, non consideration of his case on such flimsy ground is totally perverse and untenable.

5. Learned counsel for the State prayed for some time to file counter affidavit. However, on a direct query of the Court as to under the circumstances enumerated above, how such cancellation and the entire process is justified, learned counsel could not meet the query of the Court.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the cancellation of the entire process and the decision to go for a fresh exercise is totally unjustified, both on facts as well as in law.

7. As has rightly been submitted by learned counsel for the petitioner, there being no debarment of a nephew of a Mukhiya



being given license for Fair Price Shop and further that even if the authorities had any reason to go for a verification of the certificate with regard to the petitioner being handicapped, they could not have cancelled the process but were required to get the certificate verified. However, they having cancelled the process and deciding to go for fresh advertisement and most importantly, no other infirmity being found with regard to the petitioner's claim for grant of such shop to him, clearly speaks of highhandedness and arbitrariness on the part of the authorities. Since such a glaring instance of there being arbitrariness writ large in the present case, in the considered opinion of the Court, no useful purpose shall be served by asking for a counter affidavit and, thus, on the basis of the admitted position what is spelt out in the order itself, the Court finds that a case for interference has been made out.

8. Accordingly, the writ petition is allowed. The order impugned dated 18.12.2018 stands quashed to the extent that the authorities are at liberty to get the certificate, with regard to handicap relating to the petitioner, verified but the same process of selection shall be continued and taken to its logical conclusion. The direction to go for a fresh publication for such selection relating to *Pachhimi Thatha* Panchayat of *Mansi* block of Khagaria Sub-Division in the district of Khagaria also stands



quashed. The exercise be completed latest within a period of six weeks from the date of production of copy of this order before the respondent no. 2.

(Ahsanuddin Amanullah, J.)

P. Kumar

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